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नई दिल्ली, शनिवार, जून 10, 1989/ज्येष्ठ 20, 1911
NEW DELHI, SATURDAY, JUNE 10, 1989/JYAISTHA 20, 1911

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके
Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

वित्त मंत्रालय

(व्यय विभाग)

नई दिल्ली, 5 मई, 1989

का.आ. 1310:—भविष्य निधि अधिनियम, 1925 (1925 का 19)
की धारा 8 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग
करते हुए, केन्द्रीय सरकार एन.आई.आर. निदेश देती है कि उक्त अधिनियम
के उपबन्ध (धारा 6क को छोड़कर) राष्ट्रीय नगर कार्य संस्थान, नई दिल्ली
के कर्मचारियों के लाभ के लिए संस्थापित भविष्य निधि पर लागू होंगे।
[फा.सं. 4(2)-संस्था V/83(I)]

MINISTRY OF FINANCE

(Department of Expenditure)

New Delhi, the 5th May, 1989

S.O. 1310.—In exercise of the powers conferred by sub-section (2) of section 8 of the Provident Funds Act, 1925 (19 of 1925), the Central Government hereby directs that the provisions of the said Act (except section 6A) shall apply to the Provident Fund established for the benefit of the employees of the National Institute of Urban Affairs, New Delhi.

[F. No. 4(2)-EV/83(I)]

का.आ. 1311:—भविष्य निधि अधिनियम, 1925 (1925 का 19) की
धारा 8 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते
1377GI/89—1

हुए, केन्द्रीय सरकार एन.आई.आर. निम्नलिखित लोक संस्थान को उक्त
अधिनियम की अनुसूची में शामिल करती है:—

“राष्ट्रीय नगर कार्य संस्थान, नई दिल्ली”

[फा.सं. 4(2)-संस्था V-83(II)]

अनजली देवशेर, उप सचिव

S.O. 1311.—In exercise of the powers conferred by sub-section (3) of section 8 of the Provident Funds Act, 1925 (19 of 1925), the Central Government hereby adds to the Schedule to the said Act the name of the following public institution, namely:—

“The National Institute of Urban Affairs, New Delhi.”

[F. No. 4(2)EV/83 (II)]

ANJALI DEVASHER, Dy. Secy.

(आर्थिक कार्य विभाग)

(वैकिक प्रभाग)

नई दिल्ली, 24 मई, 1989

का.आ. 1312:—केन्द्रीय सरकार, औद्योगिक वित्त निगम अधि-
नियम, 1948 (1948 का 15) की धारा 21 की उप-धारा (2) के
अनुसरण में भारतीय औद्योगिक वित्त निगम के निदेशक बोर्ड की
सिफारिश पर उक्त निगम द्वारा 30 मई, 1989 को जारी किए
जाने वाले और 30 मई, 2009 को पर्यन्त होने वाले वार्षिक पर

(1649)

वेय व्याज की दर एतद्वारा 11.5 प्रतिशत (सहस्र प्रतिशत) वार्षिक निर्धारित करती है।

[फा.सं. 2/20/आई एफ -1/89]
वी पी. भारद्वाज, अवर सचिव

(Department of Economic Affairs)
(Banking Division)

New Delhi, the 24th May, 1989

S.O. 1312.—In pursuance of sub-section 2 of Section 21 of the Industrial Finance Corporation Act, 1948 (15 of 1948), the Central Government, on the recommendation of the Board of Directors of the Industrial Finance Corporation of India, hereby fixes 11.5 per cent (Eleven & half percent) per annum as the rate of interest payable on the bonds to be issued by the said Corporation on 30th May, 1989 and maturing on 30th May, 2009.

[F. No. 2(20)/IF-1/89]
V. P. BHARDWAJ, Under Secy.

उद्योग मंत्रालय

(औद्योगिक विकास विभाग)

नई दिल्ली, 26 मई, 1989

का.आ. 1313 :— व्यापार और पण्य वस्तु चिन्ह नियम, 1959 का और संशोधन करने के लिए कतिपय नियमों का निम्नलिखित प्रारूप, जिसे केन्द्रीय सरकार, व्यापार और पण्य वस्तु चिन्ह अधिनियम, 1958 (1958 का 43) की धारा 133 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, बनाना चाहती है, उक्त धारा की उपधारा (1) की अपेक्षानुसार ऐसे सभी व्यक्तियों की जानकारी के लिए प्रकाशित किया जाता है, जिनके प्रभावित होने की संभावना है और इसके द्वारा यह सूचना दी जाती है कि उक्त प्रारूप नियमों पर उस तारीख से जिसकी राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां उपलब्ध करा दी जाती है, दो मास होने पर या उसके पञ्चात विचार किया जाएगा।

किन्हीं ऐसे आर्थिकों या मुद्राओं पर, जो उपर्युक्त अधिध की समायोजित के पूर्व उक्त प्रारूप की शर्तों किसी व्यक्ति से प्राप्त होंगे, केन्द्रीय सरकार विचार करेगी।

प्रारूप संशोधन

1. इन नियमों का संक्षिप्त नाम व्यापार और पण्य वस्तु चिन्ह (संशोधन) नियम, 1989 है।

2. व्यापार और पण्य वस्तु चिन्ह नियम, 1959 में,—

(1) नियम 24 में, उपनियम (2) के पञ्चात निम्नलिखित उपनियम जोड़ा जाएगा, अर्थात् :—

“(3) कोई भी व्यक्ति मलाणी करने के लिए और प्रतिनिधित्व अधिकार अधिनियम, 1957 की धारा 45 की उपधारा (1) के अधीन इस आशय का प्रमाणपत्र जारी करने के लिए रजिस्ट्रार को प्रारूप टी एम-60 में अनुरोध कर सकेगा कि ऐसी किसी कलात्मक कृति को जिसका प्रतिनिधित्व अधिकार अधिनियम के अधीन प्रतिनिधित्व अधिकार के रूप में रजिस्ट्रारण चाहता है, उसका नाम या इनकी समरूप है कि घोषणा हो जाए आवेदक से मिला किसी व्यक्ति के नाम में व्यापार और पण्य वस्तु चिन्ह अधिनियम, 1958 (1958 का 43) के अधीन एक व्यापार चिन्ह के रूप में रजिस्ट्रारण किया गया है या यह कि उसके द्वारा ऐसे रजिस्ट्रारण के लिए उस अधिनियम के अधीन कोई आवेदन नहीं किया गया है।”

(2) पहला अनुसूची में प्रविष्टि में, 66 के पञ्चात निम्नलिखित प्रविष्टि जोड़ी जाएगी अर्थात् :—
“67 नियम 24(3) के अधीन मलाणी करने और प्रमाणपत्र जारी करने के लिए 700.00 रूपए टी एम-60”

(3) दूसरी अनुसूची में—

(i) “टी एम 59” प्रविष्टि के पञ्चात निम्नलिखित प्रविष्टि अन्तर्स्थापित की जाएगी अर्थात् :—

“टी एम-60 नियम 24(3) नियम 24 (3) के अधीन मलाणी करने और प्रमाणपत्र जारी करने के लिए अनुरोध 67”

(ii) प्रारूप टी एम 59 के पञ्चात निम्नलिखित प्रारूप अन्तर्स्थापित किया जाएगा, अर्थात् :—

“टी एम-60
फीस : 700 रूपए

व्यापार और पण्य वस्तु चिन्ह अधिनियम, 1958

नियम 24(3) के अधीन मलाणी करने और प्रमाणपत्र जारी करने के लिए अनुरोध

रजिस्ट्रार को, नियम 24(3) के अधीन यह अभिलिखित करने के लिए कि क्या कोई ऐसा व्यापार चिन्ह अभिलेख पर है जो इसके साथ भेजी गई कलात्मक कृति (प्रत्येक कलात्मक कृति व्यापार में लगभग 13 इंच × 8 इंच या 33 सेंटीमीटर × 20 सेंटीमीटर के समतल कागज पर चित्राई गई हो) के समरूप है, मलाणी के बारे में प्रतिनिधित्व अधिकार अधिनियम, 1957 की धारा 45 के अधीन उपयोग के लिए प्रमाणपत्र जारी करने के बारे में अनुरोध किया जाता है।

तारीख 19
1.
2.

सेवा में

रजिस्ट्रार व्यापार चिन्ह
व्यापार चिन्ह रजिस्ट्री कार्यालय
मुम्बई

1. हस्ताक्षर
2. भारता में पता

[फाइल सं. 14/1/88-सी पी.एंड सी.]

जयश्री दानव, उप सचिव

मूल अधिसूचना का.आ. 2603 तारीख 25-11-59 द्वारा प्रकाशित की गई थी मलाणी उक्त का.आ. तारीख द्वारा संशोधन किया गया।

- का.आ.सं. 534 दिनांक 25-2-1963
- का.आ.सं. 397 दिनांक 23-1-1969
- का.आ.सं. 5789 दिनांक 9-11-1971
- का.आ.सं. 171-ई दिनांक 1-3-1985

MINISTRY OF INDUSTRY
(Department of Industrial Development)

New Delhi, the 26th May, 1989

S.O. 1313.—The following draft of certain further amendments to the Trade and Merchandise Marks Rules, 1959 which the Central Government proposes to make in exercise of the powers conferred by Section 133 of the Trade and Merchandise Marks Act, 1958 (43 of 1958), is hereby published as required by Sub-section (1) of the said section for the information of all persons likely to be affected thereby and notice is hereby given that the draft will be taken into

consideration on or after two months from the date on which copies of this notification as published in the Official Gazette are made available.

Any objections or suggestions which may be received from any person in respect of the said draft before the expiry of the aforesaid period, will be considered by the Central Government.

DRAFT AMENDMENTS

1. These rules may be called the Trade and Merchandise Marks (Amendment) Rules, 1989.

2. In the Trade & Merchandise Marks Rules, 1959—

(i) in rule 24, after sub-rule (2) the following sub-rule shall be added, namely :—

“(3) Any person may request the Registrar, on form TM-60 to cause a search to be made and for issue of certificate under sub-section (i) of Section 45 of Copyright Act, 1957 to the effect that no trade mark identical with or deceptively similar to such artistic work, as sought to be registered as copyright under the Copyright Act, has been registered as a trade mark under the Trade and Merchandise Marks Act, 1958 (43 of 1958) in the name of, or that no application has been made under that Act for such registration by any person other than the applicant.”

(2) in the First Schedule after entry No. 66 the following entry shall be added, namely :—

“67 For a search & issue of certificate under Rule 24(3) Rs. 700.00 TM-60”.

(3) in the second Schedule (i) after entry “TM 9”, the following entry shall be inserted, namely :

“TM-60 rule 24 (3) Request for search & 67” issue of certificate under Rule 24(3).

(ii) after the form TM 59 the following form shall be inserted, namely:—

TM-60

Fee : Rs. 700.

TRADE AND MERCHANDISE MARKS ACT, 1958

Request for search and issue of certificate under Rule 24(3).

The Registrar is hereby requested under Rule 24(3) to search to ascertain whether any trade marks are on reckoned which resemble the artistic work sent herewith in triplicate (each artistic work being mounted in a sheet of strong paper approximately 13 inches by 8 inches or 33 centimeters by 20 centimeters) in size and issue a certificate for use under Section 45 of the Copyright Act, 1957.

Dated this day of19

1.

2.

To

The Registrar of Trade Marks,

The Office of the Trade Marks Registry at Bombay.

1. Signature

2. Address in India.

[F. No. 14/1/88-PP&C]

JAYASHREE WAVAL, Dy. Secy.

Principal notification was published vide S.O. 2603 dt. 25-11-59 and amended subsequently by S.O. on

1 S.O. No. 534 dt. 25-12-1963

2. S.O. No. 397 dt. 23-1-1969.

3. S. O. No. 5789 dt. 9-11-1971.

4. S.O. No. 171.E dt. 1-3-1985

कल्याण मंत्रालय

नई दिल्ली, 19 मई, 1989

का.आ. 1314.—केन्द्रीय सरकार, दरगाह खवाजा साहब अधिनियम, 1955 (1955 का 36) की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दरगाह समिति अजमेर के परामर्श से लेफ्टिनेंट कर्तब मुहम्मद उस्मान, (सेवानिवृत्त) को 2 फरवरी, 1989 से ही एक वर्ष की अवधि के लिए दरगाह खवाजा साहब का नाज़िम नियुक्त करती है।

[सं. 11(6)/83-वक्फ]

पी.जी. लेले, सचिव

MINISTRY OF WELFARE

New Delhi, the 19th May, 1989

S.O. 1314.—In exercise of the powers conferred by sub-section (1) of Section 9 of the Durgah Khawaja Sahab Act, 1955 (36 of 1955), the Central Government, in consultation with the Durgah Committee, Ajmer, hereby appoints Lt. Col. Mohd. Usman (Retd.) as Nazim of the Durgah Khawaja Sahab, Ajmer for a period of one year or and from the 2nd February, 1989.

[No. 11(6)/83-Wakf]

P. G. LELE, Jt. Secy.

धम मंत्रालय

नई दिल्ली, 15 मई, 1989

का.आ. 1315.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण से, केन्द्रीय सरकार भिलाई स्टील प्लांट, पी.ओ. भिलाई, जिला बुर्ग (म.प्र.) के प्रबन्धन से सम्बन्धित नियोजकों और उनके कामकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक प्राधिकरण, जबलपुर के पञ्चाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-5-89 को प्राप्त हुए था।

MINISTRY OF LABOUR

New Delhi, the 15th May, 1989

S.O. 1315.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhilai Steel Plant, P.O. Bhilai, Dist. Durg (M.P.) and their workmen, which was received by the Central Government on the 8-5-89.

ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(64)/1985

PARTIES :

Employers in relation to the management of Bhilai Steel Plant, P.O. Bhilai, Dist. Durg (M.P.), and their workman Shri B. M. Pandey, Time Keeper Grade I through the President, Metal Mines Workers Union (INTUC), P.O. Dallirajhara, Dist. Durg (M.P.).

APPEARANCES :

For Workman—Shri P. D. Padhak, Advocate.

For Management—Shri D. C. Henri, Asstt. Chief Law Officer.

नई दिल्ली, 16 मई, 1989

INDUSTRY : Steel.

DISTRICT : Durg (M.P.)

AWARD

Dated 25th April, 1989

The Central Government in the Ministry of Labour vide Notification No. L-26012/(27)/85.D.III.B, dated the 31st July, 1985 referred the following dispute for adjudication to this Tribunal under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947:—

SCHEDULE

"Whether the action of the management of Bhilai Steel Plant in removing Shri B. M. Pandey, Time Keeper Grade I, Rajhara, Mines from service with effect from 14-2-1984 is justified? If not, to what relief is the employee entitled?"

2. On receipt of the reference order parties filed their respective pleadings and documentary evidence. Thereafter the following issues were framed:—

ISSUES

1. Whether the domestic enquiry is proper and legal?
2. If not, whether the workman misconducted himself as alleged in the charge-sheet?
3. Whether the punishment awarded is justified?

3. From the pleadings of the parties it appears that Shri B. M. Pandey, Time-keeper Grade I, Rajhara Mines of Bhilai Steel Plant was charge-sheeted on certain allegations and after domestic enquiry he was removed from service. Workman challenged the domestic enquiry therefore I heard the parties on Issue No. 1 and decided vide order dt. 27-1-1986 in favour of workman. Aggrieved by this order the Management moved to the High Court of Madhya Pradesh, Jabalpur and the Hon'ble High Court stayed the proceedings vide order dated 26-6-1986 in M.P. No. 1240/86. By another order dated 21-4-1988 the Hon'ble High Court permitted the Tribunal to proceed with the case but passing of the final order was stayed.

4. Therefore the case was fixed for evidence of parties. But in the meanwhile good sense prevailed in parties and they have negotiated and mutually settled the matter and filed a compromise petition, duly signed by them. The terms of settlement are as under:—

TERMS OF SETTLEMENT

- (i) That Shri Pandey shall be re-appointed on the post which he held on the date of removal of service i.e. Time Keeper Grade-I, with effect from 27-1-1986 (this is the date on which the enquiry was vitiated by Central Industrial Tribunal).
 - (ii) That on his re-appointment he would be allowed to draw the pay which he would have drawn had his services, not been terminated.
 - (iii) That for the period from 27-1-86, till he joins duty as a fresh entrant, he would be paid 25 per cent of the wages.
 - (iv) That the past services shall not be considered for any purpose whatsoever. Consequently, the amount of CPF and Gratuity for the past period shall be released to him and final payment shall also be made to him as per rules.
 - (v) That he shall pay the normal rent for the quarter in his possession from the date of removal of service till his fresh appointment and he shall be allowed to retain that quarter on usual terms and conditions.
5. I have perused the terms of settlement and in my opinion they are just, fair reasonable and in the interest of workman concerned as well as the Union who raised the industrial dispute. I, therefore, give my award in terms of the above settlement.

There shall be no order as to costs.

V. S. YADAV, Presiding Officer
[No. L-26012/27/84-D.III(B)]

का.आ. 1316.—औद्योगिक विवाद प्रविनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल मिनेरल डेवलपमेंट कॉर्पोरेशन लि. के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्राधिकरण, जबलपुर के पचाई को प्रकाशित करता है, जो केन्द्रीय सरकार की 8-5-89 को प्रप्त हुआ था।

New Delhi, the 16th May, 1989

S.O. 1316.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of National Mineral Development Corporation Ltd., and their workmen, when was received by the Central Government on the 8-5-89.

ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(55)/1985

PARTIES :

Employers in relation to the management of National Mineral Development Corporation Ltd., Somajiguan, Hyderabad (A.P.) and their workman Shri M. K. Basu through the General Secretary, Samyukta Khadan Mazdoor Sangh (AITUC), Lig-9, Vaishali Nagar, Bhilai, Dist. Durg (M.P.).

APPEARANCES :

For Workman—Shri C. R. Bakshi.

For Management—Shri P. S. Nair, Advocate.

INDUSTRY : Iron Ore. DISTRICT : Durg (M.P.).

AWARD

Dated, the 25th April, 1989

The Central Government vide Notification No. L-26012/4/83-D. III-B, dated the 19th June, 1985 referred the following dispute for adjudication to this Tribunal under Section 10(1)(d) read with sub-section (2A):—

SCHEDULE

"Whether the action of the management of National Mineral Development Corporation Ltd., in not allowing the leave benefits to Shri N. K. Basu, Store Keeper under N.M.D.C. Service Regulations was justified? If not, to what relief is the concerned workman entitled?"

2. Parties contested the dispute by filing their pleadings and documents etc. When the case was at the stage of filing written arguments and the Union filed the written arguments, the workman concerned Shri M. K. Basu filed an application stating that since he has been promoted to the post of Junior Officer (Materials) i.e. Supervisory cadre, he is not interested in the decision of the case. Therefore, he withdraws the present case.

From the above it appears that the workman concerned is not interested in prosecuting the case. I, therefore, record no dispute award in the present reference.

No order as to costs.

V. S. YADAV, Presiding Officer.
[No. L-26012/4/83-D.III(B)]

नई दिल्ली, 18 मई, 1989

का.शा. 1317.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) के धारा 17 के अनुसरण में, केन्द्रीय सरकार ने भारत पेट्रोलियम कार्पोरेशन लि., बंगलूर के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलूर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-5-89 को प्राप्त हुआ था।

New Delhi, the 18th May, 1989

S.O. 1317.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd., Bangalore and their workmen, which was received by the Central Government on the 12-5-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated, the 27th Day of April, 1989

Central Reference No. 68/88

I PARTY :

Shri Satyaprakash Major, No. 37, 11th Main Road, Vasanthanagar Bangalore-560052.

Vs.

II PARTY :

The Manager, M/s. Bharat Petroleum Corporation Limited Banasavadi Road Maruthi Sevanagar, Bangalore-23.

APPEARANCES :

For the I party Shri N. G. Phadke, Advocate.

For the II party Shri T. G. Achar Advocate.

AWARD

By exercising its powers under Section 10(1)(d) of the I. D. Act, the Government of India, Ministry of Labour made the present reference on the following point of dispute by its Order No. L-30012/39/88-D.III (B) dated 19-12-1988.

POINT OF REFERENCE

"Whether the action of the management of M/s. Bharat Petroleum Corporation Ltd., Bangalore in terminating the services of Shri Satyaprakash, ex-employee w.e.f. 28-2-1983 is justified? If not, what relief is the said workman entitled to?"

2. The I party workman has filed his claim statement and his contentions, in brief, are as follows.

He has worked as a Peon in the II party management from 1-9-1981 to 28-2-1983. He was drawing a salary of Rs. 702 per month. His services were terminated illegally on 28-2-1983. With an intention to get rid of the I party as he a deaf person and to confirm the services of one Shri Napoleon Sunanda Kumar, the management started making false accusations against him. Two interested employees joined hands with the management and the II party thought of creating certain records against him. A chargesheet was issued against him, making false allegations. A show of an enquiry was held. By deceitful means documents were prepared to make, belittled that they were helping him. Then he was dismissed, by a letter dated 28-2-1983 which was posted on 14-3-1983. He wrote a letter dated 28-3-1983 not to harass and to withdraw the order of termination, since he is a physically handicapped person and since he had committed no fault, but no reply was sent. He approached the Conciliation Officer of the Government of Karnataka by a petition dated 17-5-83. The management took an adamant attitude and hence a reference was made by the Government of Karnataka to the Additional Labour Court, Bangalore by

an order dated 20-9-1984. The Hon'ble High Court of Karnataka quashed the said order in W.P. No. 6122/1985, filed by the II party, on the ground that the appropriate Government is the Central Government. He then approached the Central Government. The Government did not make the reference. He filed W.P. No. 5759/1987. It was allowed on 23-9-1988. The present reference was made on 19-12-1988. The action of the management is illegal on the following grounds :

- (1) It is in violation of principles of natural justice,
- (2) He was dismissed from service, because the II party had taken interest in confirming Shri Napoleon Sunanda Kumar,
- (3) Their action is unreasonable and mala fide.
- (4) Their action is not in good faith,
- (5) It is in colourable exercise of powers of the II party,
- (6) Fair and proper enquiry was not held,
- (7) The order of dismissal is not passed by a competent person,
- (8) It is not in accordance with the Standing Orders.
- (9) The Enquiry Officer was supporting to the Presenting Officer. He has not recorded any evidence. He has not given copies of the proceedings to him. The findings of the Enquiry Officer were not given to him, and
- (10) The punishment imposed on him is disproportionate. An award may be passed, holding that the order of dismissal is illegal and for reinstatement and consequential benefits.

3. The II party has filed its counter statement and inter alia, it is contended as follows :

He was appointed as a Peon on probation for 12 months by a letter dated 1-9-1981. He reported to the Installation Manager at Bangalore on 1-9-1981. During his probationary period, it was reported on 31-8-1982 that he used abusive language, threatened and assaulted a co-worker by name Shri A. Ganesan. A memo dated 1-9-1982 was issued to him to show cause as to why disciplinary action should not be taken. He was informed that on account of seriousness of the acts alleged against him, he was suspended from work. When the said show-cause notice was attempted to be served on him on 1-9-82, he refused to accept the same. The letter was read out to him in the presence of Shri V. J. Thiruvankitam, Deputy Installation Manager, Shri G. Swaminathan, Operations Officer, B. Krishnamoorthy, Clerk-cum-typist and Shri M. Ananda, Gauger. The accusation was explained to him in Kannada. Since he refused to accept the same was sent to him by Registered post to his residential address. A copy was affixed on the notice board with another memo. He replied by a letter dated 4-9-1982. It was not satisfactory. A chargesheet dated 14-9-1982 was issued to him and it was shown that he had committed acts of misconduct punishable under clauses 29.1.5, 29.1.6 and 29.1.7 of the Standing Orders. He was informed that an enquiry would be held on 24-9-1982 in the installation office. He was further informed that he may bring a co-worker to assist him in the enquiry. Sri K. Neelakantan, the Deputy Divisional Manager, Bangalore in the presence of workman held the enquiry on 24-9-82 and continued it on 14-10-1982. He did not avail of the service of any co-worker to defend him. He also stated that he had no witness on his side. He stated that he did not want to cross-examine the witnesses. He was given all the opportunities. He filed certain statements and they were marked. The Enquiry Officer held him guilty. The Director (Marketing) under whom the Installation Branch is placed, went through the entire record and found him guilty. Considering the nature of the charges, that were proved against him and his past record, he was dismissed from service by proceedings dated 14-2-1983. Following the same an order was issued on 28-2-83. Apart from the same, his past service during the probationary period was highly unsatisfactory. The enquiry held against him is proper and valid. The allegations made by him are incorrect. There was no intention on the part of the II party to get rid of him on the ground that he is a deaf person. At the time of his appointment itself it was known that he was deaf. The medical examination re-

port dated 27-8-1981 itself shows against the column of "Hearing"—"Poor". There was no need to terminate his services for confirming Napoleon Sunanda Kumar. No false accusation was made against him. Various statement made by him are after thoughts. Many letters of warning and caution were issued to him in 3-12-81, 3-2-82, 22-4-82 and 29-8-82. His probationary period had ended on 31-8-1982. The II party would have been well within its right to terminate his service on the ground that his service was not satisfactory by the end of 31-8-1982. However, the procedure was adopted to give him full opportunity. The allegations against him were found to be true on due enquiry. It is true that he had written a letter dated 22-3-1983. Since there was nothing new, there was no necessity to send any reply. There is no need to state anything regarding the conciliation and subsequent matters. The grounds put forth by him in para 4 do not have any merit. No principle of natural justice has been violated. There is no connection between the dismissal is no colourable exercise of power. The Personnel Manager Sunanda Kumar. There is no want of good faith. There is no colourable exercise of power. The Personnel Manager is competent to issue the order of dismissal. The decision to dismiss him has been taken by the Director (Marketing), who is fully competent. The Enquiry Officer was not subordinate to the Presenting Officer. The Enquiry Officer was the Deputy Divisional Manager on the sales side in the Divisional Office, Bangalore. The Presenting Officer, at that time was the Deputy Installation Manager in the Installation side at Bangalore. They are separate units. The punishment ordered against him is commensurate with the misconduct. He is not entitled to any relief. The reference may be rejected.

4. In view of the said pleadings, a preliminary issue was raised as shown below.

"Whether the second party proves that it has held the domestic enquiry in accordance with law?"

5. On the said issue, the management examined MW-1 the Enquiry Officer and got marked Exs. M-1 to M-6.

6. No evidence was adduced for the workman.

7. The parties were heard. By a considered order dated 6-3-89, it was held that the domestic enquiry held by the management is in accordance with the law.

8. Thereafter, the parties were called upon to adduce evidence on the rest of the points and argue.

9. The management has examined MW-2. Then the workman got himself examined and got marked Exs. W-1 to W-3.

10. The parties have been heard.

11. My findings on the point of reference is as follows.

The management of M/s. Bharat Petroleum Corporation Ltd., Bangalore was justified in terminating the services of Shri Satyaprakash, ex-employee with effect from 28-2-1983 and he is not entitled to any relief.

REASONS

12. In the grounds put forth by the I party workman, it has been stated that no fair and proper enquiry was held against him. In that connection, a considered order dated 6-3-89 has been passed that it is in accordance with the law.

13. The other contentions raised by the I party workman are that the II party was interested in one Napoleon Sunanda Kumar and in order to confirm him a partisan view has been taken against the I party. The II party has denied the said allegation. It is their contention that there was no nexus between the confirmation of Napoleon Sunanda Kumar and the disciplinary action taken against the I party workman. In para 33 of his evidence WW-1 Satyaprakash has stated that he was removed from service by the II party, in order that they intended to take their man. In para 36 a specific question has been put to him that he had alleged that the management intended to take their own man and therefore he was removed and whether he can name that person. In reply, he has stated that person is Napoleon Sunanda Kumar.

In para 37 he however, concedes that Napoleon Sunanda

Kumar was working with the II party when he was also working. It is not explained as to how the management was interested in removing the II party from service, if it is an admitted fact that Napoleon Sunanda Kumar was already working and was very much in the II party when the I party Satyaprakash was also working. No case has been put forth either in the claim statement and there is no piece of evidence, nor is there any suggestion either to MW-1 or to MW-2 that there was any necessity to remove the I party from service in order to confirm Napoleon Sunanda Kumar. No motive has been suggested to the management in the claim statement and no suggestion has been made to any management witness that they had any reason to take sides with Napoleon Sunanda Kumar.

14. The sequence of events would themselves show that there is hardly any truth in the allegation that the management was taking sides with Napoleon Sunanda Kumar. Ex. M-7 dated 1-9-1982 is the letter which was sent to the I party by registered post. Ex. M-8 is the postal acknowledgement due to show that it has been served on the I party forthwith. Ex. M-7 reads that original letter dated 1-9-1982 which the I party had refused to accept had been enclosed to the said letter and since he had refused to receive the same, it was read out to him in Kannada in the presence of several officials as named therein and the same has been sent to him by Registered Post Ack. Due Ex. M-6 is the letter dated 1-9-82 and the management contends that it had been tendered to the I party, but he had refused to receive the same. Ex. M-6 reads that at about 2.30 p.m. on 31-8-82, the I party had used abusive language, threatened and assaulted A. Ganesan a co-worker in the kitchen block in the presence of Napoleon Sunanda Kumar and that he had been called upon to show cause as to why disciplinary action should not be taken against him. Ex. M-9 is the reply sent by the workman to Ex. M-7 and Ex. M-6. In Ex. M-9, he states that he is not guilty, that he did not assault Ganesan on 31-8-82, but that on that day Ganesan and Napoleon had entered into the kitchen and started eating biscuits and at that time he was washing the plate. He further alleges in Ex. M-9 that he asked him not to eat the biscuits but he did not listen. He adds that he asked them to quit the kitchen or else he would report the matter to the superior officers. But they got angry and assaulted him, threatened that they would kill him and pointed a knife. He then alleges that Ganesan is always in the habit of picking quarrels with him and Napoleon always took sides with Ganesan and helps him to harm him (Satyaprakash). He then alleges that Ganesan always abuses him in the vulgar language and tells him to go away, since he is handicapped. He further states that he should not be punished for offences which he has not committed. After the said explanation was sent to the management, the counter statement shows that he management had issued the chargesheet Ex. M-1 dated 14-9-81, being not satisfied with his explanation. Ex. M-3 dated 24-9-83 is the reply given by the workman to the same. In Ex. M-3, he had complained that he felt sorry, because the management did not consider his explanation dated 4-9-82. He has reiterated his allegations made against Ganesan and Napoleon in Ex. M-3. He further alleges that though he had politely told them not to eat the biscuits, since he would be held responsible, they used vulgar language and that Ganesan spat on his face and threatened to take revenge. In para 3 of Ex. M-3 he alleges that both of them shouted at him in a loud voice and addressed as "you bloody deaf boy count your days in this organisation. If you want to be safe, you better resign from the job and quit or otherwise we will see that you will be sacked from the job, we waited for a long time the opportunity came to us, we utilise this to the best possible level to sack you and so on". In para 10 of Ex. M-3, he further alleges that those two persons had threatened him and many times they had forced him to resign from the job, for the reason that the job was reserved for someone else. There is no allegation as such against the management or that the management had been taking sides against the workman and it was in favour of the said Ganesan or Napoleon. Thus neither in Ex. M-9 nor in Ex. M-3 there is any case suggesting that the management had any cause to take sides with Napoleon. The learned counsel referred to Ex. M-15 and pointed out that though it is dated 29-8-82, it has been signed on 3-9-82 and because in the meanwhile the letter Ex. M-6 dated 1-9-82 had been issued, it is obvious that the management has manipulated the things and that an inference arises that they were contemplating to terminate his services even before Ex. M-6 was issued. Ex. M-15 is dated 29-8-82, and it deals with an incident dated 9-8-82 of 7.30 a.m. Ex.

M-15 reads that on an earlier occasion, by a letter dated 22-4-82, he had been cautioned to correct his behaviour and should not indulge in the repetition of such acts, but it was reported that on 9-8-82 he was making allegations against Ganesan at the Tellyman's Office, that he had used abusive language and threatened him, that he would be assaulted outside the premises. Merely because the Installation Manager had signed the letter Ex. M-7 dated 1-9-82 and another letter Ex. M-6 on the same day, it cannot be said that there was manipulation of the letter Ex. M-15 dated 29-8-82, since it bears his signature dated 3-9-82. The learned counsel further contended that the letter Ex. M-15 signed on 3-9-82 indicates that there was no incident on 30-8-82. As observed earlier, the typed date in Ex. M-15 is 29-8-82. The incident which made the management to issue Ex. M-6 was of 31-8-82 of 2.30 p.m. It is obvious from Exs. M-6 and M-7 that because the incident dated 31-8-82 of 2.30 p.m. was of grave nature, the management had taken immediate steps to issue Ex. M-6 but since the workman refused to receive the same, the management had to resort to read it out in the presence of as many as four witnesses and had then sent the same by Registered post and Ex. M-8 establishes the fact that Ex. M-6 and Ex. M-7 had been served on him. The letter Ex. M-15 related to the incident of 9-8-82 and from the very nature of the contents of Ex. M-15, it can be made out that the officer had signed it in routine course along with other papers on 3-9-82 and thereafter it had been sent by registered post. The postal acknowledgement at Ex. M-16 further proves the fact that Ex. M-15 was served on him by Registered post. The allegations made by the I party workman in para 2 or in para 4 of the claim statement that the II party had taken sides of Napoleon is found to be far from truth, in the context of the evidence analysed above.

15. The I party workman has alleged in the claim statement that the action of the II party is not in good faith and that it is against all the canons of justice. The II party on the other hand, has contended that though it was permissible to merely pass an order stating that his probationary was not satisfactory and discontinue him, in order to give him, in order to give him a fair opportunity, it has issued the charge sheet and has held the enquiry and on due satisfaction that he was guilty his service has been discontinued. The evidence of MW-2 the Senior Manager shows that since there was a vacancy, they wrote to the Employment Exchange to send a panel of candidates and also addressed to the Zilla Synik board for considering the case of Ex-servicemen. It appears in para 4 of his evidence that as per the Government guidelines, they were required to recruit physically handicapped persons also and since the I party workman was sponsored by the Employment Exchange, he was appointed as a peon in the category reserved for physically handicapped. It is not the case of the I party workman that Napoleon was also appointed in the category of physically handicapped, being sponsored by the Employment Exchange. Not even a suggestion is made either to MW-1 or MW-2 that the said Napoleon was a rival to the I party in any manner, either in the matter of recruitment or in the matter of confirmation or seniority or promotion. In order to refute the contention that the management is interested in somebody else and therefore the service of WW-1 Satyaprakash has been terminated, the management had produced MW-2 and his evidence shows that after the service of WW-1 was terminated on 28-2-83, the said post has been filled up through the Employment Exchange and a Scheduled Caste physically handicapped candidate sponsored by the Employment Exchange by name C. Bilvamani has been appointed with effect from 28-8-83 and that the said person is not known to anybody in the management. The evidence of MW-2 in para 12 discloses that there are about 10,000 employees in the II party. In the absence of specific allegations in the claim statement and concrete evidence produced by the workman, it cannot be accepted that the management was interested in somebody else or in Bilvamani or in Napoleon and therefore his service has been terminated. The management has proved that it has acted in good faith, whereas it has not been proved by the workman that it lacks good faith.

16. It has been alleged in the claim statement that the action of the management is in colourable exercise of its powers. The enquiry proceeding discloses that the management and the Enquiry Officer had given him all the opportunities to defend himself but it was the workman himself who did not care to avail the same. There is no evidence on record to show that the management acted in colourable exercise of its powers.

17. It is alleged in the claim statement that the I party assumed that the Enquiry Officer had given perverse findings. It requires to be examined whether the findings of the Enquiry Officer are perverse. The perversity has two tests. The first test is whether the finding is not supported by any legal evidence. The second test is whether on the basis of the material produced before the enquiry officer any reasonable person would have arrived at the findings complained of. Before the Enquiry Officer, the evidence was that of the witness examined for the management the complainant A. Ganesan, his complaint and the written statements filed by the workman himself. It has not been pointed out which part of the aforesaid evidence was not legal evidence and as to in what manner the Enquiry Officer has taken into account inadmissible evidence. In my view, the oral evidence of Ganesan that of the workman, the complaint, and the written statements of the workman such as Ex. E-1, E-2, E-3 and E-4 marked by the Enquiry Officer have been admitted in evidence in accordance with law. It is, therefore, not a case wherein the findings of the Enquiry Officer are based on inadmissible evidence.

18. The proceedings of the Enquiry Officer are at Ex. M-2. From pages 1 to 5 of Ex. M-2 there are the proceedings dated 24-9-1982. The said proceedings show that in the first instance he was asked whether he has understood the charges and when he confirmed he was asked whether he intended to plead guilty or not guilty. He has pleaded not guilty. When he was questioned whether he wanted any assistance, he did not answer directly but he stated that whatever he wanted to say has been mentioned in his letter dated 24-9-82, Ex. E-1 and he has nothing more to add. He has further stated that he was not prepared to sign in the proceedings. He has further stated that he would like to have a Kannada translation and then he would show it to his brother and then only he will sign. Though an interpreter was designated, the workman has refused to accept him. Thereafter, the Presenting Officer has explained the case of the management and has produced the complaint given by Ganesan. Then Napoleon has been examined for the management. The I party workman was asked whether he intended to cross-examine Napoleon with reference to his evidence and written statement Ex. W-3. The workman has still then stated that he does not want to cross-examine Napoleon and that whatever he wanted to say has been stated in Ex. E-1. Thereafter the Enquiry Officer had asked the I party Satyaprakash whether he intended to make any statement. The workman has reiterated that whatever he had to state has been stated in Ex. E-1. The proceedings further disclose on page 5 that the workman refused to sign in the proceedings and stated that he may be allowed to take the proceedings and show the same to his brother, before putting his signature. Ex. M-2 then shows that the enquiry was adjourned and it was resumed on 14-10-82. On that day at the commencement of the enquiry, the Enquiry Officer has explained to the workman that he was free to make any statement or to examine any witness and in order to assist him Mr. Satish Chandra had been appointed as the interpreter. The workman has then stated that he had given his written statement dated 24-9-82 and he was further giving another statement of even date and he did not want to add anything. He has been again asked whether he had any witness. The workman has stated that he had told the truth and he did not want to produce any witness. Thereafter, the Presenting Officer has requested the Enquiry Officer that because the workman had filed a subsequent statement, he would like to ask him some questions. The questions asked by the Presenting Officer, on close examination would disclose that these were with reference to his second written statement. After getting the clarifications with reference to his written statements the Presenting Officer, has examined Shri A. Ganesan. The Enquiry Officer has given opportunity to the workman to cross-examine the said witness Ganesan. These matters have been already examined and discussed while dealing with the preliminary issue. The evidence of Napoleon and Ganesan and the documents marked by the Enquiry Officer as E-1 to E-4 have been taken into account for recording the findings. In para 13 of the report, Ex. M-5, the Enquiry Officer has discussed about the said evidence. The evidence of the two witnesses is mutually corroborative and has been substantiated by the documents. On going through the same, I find that any reasonable person could have arrived at the same conclusion as recorded by the Enquiry Officer.

18. The procedure of termination of service for misconduct has been shown in Clause 28 of the standing orders. The procedure followed by the Enquiry Officer is in accordance with the said provision. There is no force in the contention of the I party that the management has not followed the provisions of the Standing Orders.

19. The learned counsel for the I party contended that on receipt of the letter dated 1-9-1982, Ex. M-6 along with the memo Ex. M-7, the workman had given his explanation as per Ex. M-9 dated 4-9-82 and it was incumbent on the part of the management on receipt of the same to have enquired into the matter and called for the explanation of Napoleon and Ganesan, since the I party workman had levelled allegations against them. But, in not doing so, the management had acted in a partisan manner. The very purpose of holding a domestic enquiry is to find out the truth in the allegations made against a workman. It was for the workman to avail of the opportunity provided to him and to show that he was the victim and the management witnesses were the aggressors. The management cannot be simply blamed if the workman does not avail of the opportunity provided to him. I do not find that because the workman had levelled certain allegations against Ganesan and Napoleon, the management should have issued chargesheet and conducted an enquiry against them.

20. The learned counsel for the I party contended that after the enquiry had been once closed, the same had been re-opened at the request of the Presenting Officer in order to fill in the lacuna and thus he was biased. The said aspect has been already considered while dealing with the preliminary issue. The evidence of the Enquiry Officer and the proceedings themselves show that because the workman had given another written statement, it was necessary for the Enquiry Officer to provide further opportunity to the management to adduce its evidence and also to give further opportunity to the I party workman to put forth his case. Since the charge-sheet deals with the allegation that the I party workman had Presented Officer had proposed to examine him and if the Enquiry Officer had provided an opportunity to the workman to cross-examine the said Ganesan. In my view, no bias can be inferred, if the Enquiry Officer has provided further opportunities to both the parties.

21. The learned counsel for the I party strongly contended that the evidence of Napoleon and Ganesan are contradictory in as much as they are not certain as to who had gone to the kitchen in the first instance and how the incident had taken place. On main point, the evidence of both the witnesses is corroborative and if there are minor discrepancies, it cannot be said that the appreciation of the evidence by the Enquiry Officer is not correct.

22. The learned counsel for the I party contended that there was no complaint to the police and therefore the evidence of the said witnesses should not have been believed. It cannot be said that merely because there was no police complaint, the entire incident was a concocted one. Secondly, that there was an incident is an admitted fact, but the only contention is whether it was the workman who committed the misconduct or whether the persons who committed misconduct were Napoleon and Ganesan. Ex. P-2 dated 31-8-82 is in Tamil and the learned counsel for the I party has filed a copy of the English translation. Immediately on 1-9-82, the management has taken steps to issue Exs. M-6 and M-7. The conduct of the workman in refusing to receive the letter, Ex. M-6 is not consistent with his allegation made in Ex. M-9 against Ganesan and Napoleon. The evidence of Ganesan finds support from the earliest document, his complaint Ex. R-2, as marked by the Enquiry Officer. In my view, it was not of much consequence whether Ganesan had given a police complaint or not, for arriving at a conclusion by the Enquiry Officer whether he had committed misconduct or not.

23. The learned counsel for the I party contended that though the evidence on record shows that many others had gathered there, the management did not examine other witnesses and thus the alleged misconduct was not proved. There is no contention raised in the claim statement and it is not the case of the I party workman that he had sought for the examination of any other witness, but that the management kept back or suppressed any relevant evidence. It is the look out of the Presenting Officer to see how best he can put

forth and establish the case of the management. The Enquiry Officer is concerned only with the evidence, as placed before him and to find out whether the charges levelled against the workman have been established or not. It cannot, therefore, be said that the Enquiry Officer committed any error in not calling upon the Presenting Officer to examine any other witness.

24. The learned counsel for the I party submitted that in case where the consequences are grave, such as dismissal, the standard of fairness and reasonableness adopted by civil court will apply and that in the present case the standard of proof as expected is not to be found and that the workman is entitled to reinstatement and consequential benefits. He relied upon the case of P.B. Rocho Vs. Union of India and others (1984 SC page 359). As regards the question of fairness and reasonableness, it has been already observed that the management and the Enquiry Officer have been fair enough to provide him with all the opportunities to defend himself, but he has himself not availed of them. The evidence of Napoleon, Ganesan and documents at Exs. E-1 to E-4 constitute satisfactory evidence and even applying the standards as adopted by the civil court, I am of the view that the findings of the Enquiry Officer cannot be called as perverse. The authority further states that the court should also examine whether the conclusion arrived at by the Enquiry Officer is inconsistent with the only rational and fairly possible view. In my view, the findings arrived at by the Enquiry Officer are not at all inconsistent with the rational and fairly possible view. The authority, would, in my opinion is of no assistance to the I party.

25. The learned counsel for the I party further cited the case of the workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and others (1973 1 L.L.J. page 278). The authority has been relied upon to show that a labour court can come to its own conclusion by giving cogent reasons in regard to the merits of the misconduct and also in regard to the quantum of punishment even in case where proper domestic enquiry has been held. There is no material before me to come to a conclusion that the I party Satyaprakash is innocent whereas Napoleon and Ganesan had abused or assaulted the workman Satyaprakash. On the contrary, the report of the Enquiry Officer shows that the findings are supported by cogent evidence.

26. The learned counsel for the I party then relied upon the case of M/s. Bharat Iron Works v. Bhagubhai Balubhai Patel and others (1976 LAB I.C. Page 4). The principle laid down in the authority is that the Tribunal has the right to interfere with the order of dismissal passed by the management on the basis of the findings of the domestic enquiry. There is no dispute as regards the powers of this Tribunal to take a different view from the one as recorded in the domestic enquiry, if the evidence on record justifies the same. In my view, the evidence on record does not justify for a different view.

27. The I party has then placed reliance on the K.C.P. Employees' Association Madras Vs. the Management of K.C.P. Ltd., Madras (1978) (1) LLJ page 322). The authority is with reference to payment of bonus act and it is not pertinent.

28. The learned counsel for the I party has then cited the case of O. P. Gupta Vs. Union of India and others (1987 Supreme Court Cases (L & S) page 400). The authority has been relied upon to show that there is no presumption that Government always acts in a manner which is just and fair. There is no question of the I party contending that there is a presumption that it has acted in a manner which is just and fair. The facts and circumstances of the case have been analysed minutely and on proper appreciation of evidence, it is found that the findings of the Enquiry Officer cannot be called as perverse.

29. The I party has raised a contention in sub para 9 of para 4 of the claim statement that the Enquiry Officer was a subordinate officer to the Presenting Officer and thus the Enquiry Officer was not the proper person to hold the enquiry. In the counter statement, it has been contended that the Enquiry Officer was then the Deputy Divisional Manager on the Sales side in the Divisional Office of Bangalore, whereas the Presenting Officer was the Deputy Installation Manager in the Installation side at Bangalore and that both the units were entirely different. MW-1

Neelakantan, the Enquiry Officer has sworn in para 3 that he was the Deputy Divisional Manager in Bangalore at the relevant time. In para 7, he further swears that the Presenting Officer was only a B. Com graduate and he had no legal qualification that he was then working as a Deputy Installation Manager in the Installation branch, Bangalore. He has further stated that the installation is in the supply department whereas then he was working in the sales department. He further adds in para 8 that the two departments are entirely different and the officers used to report to different officers. The said evidence has not been challenged. There is no evidence to the contra. It is thus manifest from the record that the contention that the Enquiry Officer was subordinate to Presenting Officer does not hold water. The learned counsel for the I party has placed reliance on the authority of Scooter India Ltd., Lucknow Vs. Labour Court, Lucknow (1989 I. L.L.J. page 71). The facts of the reported case would show that for the distribution of pamphlets, severe punishment had been imposed and in that context, it has been held that even in a case where the enquiry is held to be fair and lawful, the labour court was justified in setting aside the order of dismissal. The facts of the case at hand are entirely different. The principle laid down is not applicable.

30. The learned counsel for the II party has placed reliance on the case of Kanyakumari Automobiles (P) Ltd. Vs. P. Notarajan and another (1983 I L.L.J. page 323) and contended that it is not a fit case wherein the discretion under Section 11-A can be exercised. The authority states that to grant relief under Section 11-A there must be a finding that the discharge or dismissal is not justified and that unless there is such a finding, there is no power to grant relief under Section 11-A. The learned counsel for the I party has strongly contended that the I party workman is a handicapped person, that he has been honest enough to admit that he has been presently doing milk vending and that he was the victim of collusion between the other workman and therefore the provisions of Section 11-A may be pressed into service. On the other hand, the learned counsel for the II party argued that even during the period of probation, his conduct was not good, that his past record was taken into account and it was that he was not behaving properly and that the management was fully justified in imposing the present punishment. The past record of the workman has been taken into account for the purpose of passing the final order. The contention that the past record has not been shown in the chargesheet is, therefore, not available. The appointment order Ex. W-3 itself shows that he was under probation for 12 months. It is not the case of the workman that anyone in the management was having any grouse against him, except for his allegation that Neolean and Ganesam used to trouble him often. There is no case of victimisation or vindictiveness on the part of the management. The contention that the management had manipulated certain documents has been refuted. The management has contended that he has committed acts of misconduct falling under Clause 29.1.5, 29.1.6 and 29.1.7. Clause 1.5 deals with the misconduct of committing an act subversive of discipline or good behaviour within the premises of the company in the course of duty. Clause 1.6 deals with use of abusive language within the premises against a good workman. Clause 1.7 deals with refusal to accept any communication in accordance with the Standing Orders. The first two charges have been established by concrete evidence. The Enquiry Officer has held that though the workman has stated that he had not refused to receive the letter on 1-9-82, but he had stated that he would bring some person from the house and would then accept the statement amounting to admission of refusal and thus the third charge also had been proved. Merely because the workman is a handicapped person suffering from hearing defect his conduct cannot be justified and he cannot be permitted to say that he can refuse to accept any lawful communication saying that he would go to his house, consult somebody and then he would return and accept the same. In my view, the finding on the third charge is also correct.

31. Looking from any angle, I do not find that it is a fit case to invoke provisions of Section 11-A of the I.D. Act. The order of dismissal is commensurate with the act of misconduct
1377 GI/89—2

32. In the result, an award is passed to the effect that the management of M/s. Bharat Petroleum Corporation Ltd., Bangalore was justified in terminating the services of Shri Satyaprakash, ex-employee with effect from 28-2-1983 and that he is not entitled to any relief.

B. N. IALGE, Presiding Officer
[No. L-30012/39/88-D.III(B)]

नई दिल्ली, 25 मई, 1989

का.आ. 1318—औद्योगिक विवाद अधिनियम, 1947 (1947 का. 14) की धारा 17 के अनुवर्णन में, केन्द्रीय सरकार जयपुर मिनरल डेवलपमेंट सिन्डिकेट (प्रा.) लि. जयपुर के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

New Delhi, the 25th May, 1989

S.O. 1318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Jaipur Mineral Development Syndicate (P) Ltd., Jaipur and their workmen, which was received by the Central Government on the 16-5-1989.

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर।

केस नं. सी. आई. टी. 4/88

पक्षों में भारत सरकार, श्रम मंत्रालय, नई दिल्ली
को प्राज्ञा क्रमांक एन. 29011/31/87-डी. III (बी) दिनांक 29-12-87।

अनुरोध से श्री. आर. के. एम. सी.
एम. एस. एम. नुसुद कार्यालय, देवडीजी
का मस्तिष्क जोहरी बाजार, जयपुर (राजस्थान)
— प्राचीन पक्ष

बताम

जोफ एम्प्लोयीज्, लि.
जयपुर मिनरल डेवलपमेंट सिन्डिकेट प्रा. लि.
प्रेस प्रकाश एम. एम. एम. हाईवे जयपुर
(राजस्थान)

नियोजक पक्ष

उपस्थित

माननीय न्यायाधीश श्री प्रताप सिंह यादव आर.एच.जे.एम.
यनियम की ओर से : कोई नहीं
अप्राचीन नियोजक की ओर से : श्री आर.सी.पाराडीवान
अवार्ड दिनांक 30-12-88

अवार्ड

भारत सरकार श्रम मंत्रालय नई दिल्ली के उप सचिव ने उनकी प्राज्ञा क्रमांक एन-29011/31/87-डी III (बी) दिनांक 29-12-1987 निम्न विवाद अर्जित धारा 10 (1) (ब) अनुवर्णन एवं 2 (क) औद्योगिक विवाद अधिनियम 1947 जिते अन्तर्गत अधिनियम निम्न प्राप्ति का अन्तर्गत अधिनियम इस न्यायाधिकरण को भेजा है।

विवाद

"का जयपुर मिनरल डेवलपमेंट सिन्डिकेट प्रा. लि. जयपुर के प्रबंधन की केवल स्तुतन सज्जरी देने को कार्यवाई न्यायजित

है जबकि दबोटा में सोप स्टोन माइन्स पिछले 5 दशकों से कार्य कर रही है, यदि नहीं तो कर्मकार किस घर से मजदूरी के हकदार हैं।"

बाद प्राप्ति उपर निर्देशन इस न्यायाधिकरण ने पंजीकृत किया गया। उमय, प्रवक्ताओं को नोटिसेज भी न्यायाधिकरण में उपस्थित आने के लिये जारी किये गये। जनरल सैक्रेटरी राष्ट्रीय खनन मजदूर कांग्रेस सोप स्टोन माइन्स दबोटा ने दिनांक 17-3-88 को निम्न स्टेटेमेंट आफ क्लेम प्रस्तुत किया। यह की राष्ट्रीय खनन मजदूर कांग्रेस सोप स्टोन माइन्स दबोटा निरुक्त पंजीकृत एक पंजीकृत संघ है जयपुर मिनरल डवलपमेंट सिन्डिकेट में कार्यरत अधिकतम श्रमिक इन यूनियन के सदस्य हैं। जो प्रबन्धन द्वारा मान्यता प्राप्त संघ है। आने व्यक्त किया कि प्रार्थी यूनियन ने अप्रार्थी प्रबन्धक से मांग की कि कुशल अर्थकुशल कामकारों को सन् 1980-81 तक पेन्सकेन में वेतन दिया जा रहा था। तथा संहार्य करता इत्यादि अलग से निर्धारित था। परन्तु सन् 1981 में सभी किसम के कर्मकारों को न्यूनतम वेतन दिया जाना प्रारम्भ कर दिया जिसका अप्रार्थी प्रबन्धक ने कोई कारण नहीं बताया। इसलिये सभी किसम के कर्मकारों को सन् 81 से वेतन श्रृंखला में वेतन मिलना चाहिए था जैसा कि पूर्व में मिल रहा था। आने यूनियन की मांग को लिखकर कुशल और अर्थकुशल के सर्वोच्च (ऑपरेशनल व अन्डर-ग्राउन्ड) में काम करने वालों के लिये क्रम से एक से सात तक मांगे वेतनमान का ब्योरा दिया (और यह भी व्यक्त किया कि अप्रार्थी प्रबन्धक के संस्थान में कार्यरत श्रमिकों को न्यूनतम वेतन दिया जाना न्यायसंगत नहीं है। प्रार्थी यूनियन ने मांग न मानने पर आन्दोलन किया अप्रार्थी प्रबन्धक ने आस्थासून दिया कि सभी श्रमिकों को पेन्सकेन में वेतन देना प्रारम्भ कर वेगे। आन्दोलन समाप्त करे तो यूनियन ने आन्दोलन समाप्त कर दिया। सभी कामकारों ने अपना अपना कार्य निष्ठापूर्वक करता प्रारम्भ कर दिया आने व्यक्त किया कि अप्रार्थी प्रबन्धक ने 5 अगस्त 1987 को बायदा किया था कि छूटके श्रमिक प्रार्थी पक्ष तथा सहायक श्रमिक आयुक्त केन्द्रिय मिल जो भी वेतन मान देंगे उसे स्वीकार कर लिया जायेगा, परन्तु अप्रार्थी प्रबन्धकों ने उसे भी आर्ता के भन्दार अस्वीकार कर दिया। अतः प्रार्थी को सभी किसम के कामकारों को न्यूनतम वेतन देना प्रबन्धक एवं अर्जुन घोषित कर वेतन श्रृंखलाओं को वेतन संहार्य तथा बी.डी.ए. सार्विक अलाउन्स, सकान किराया एवं हाई इम्यूटी अलाउन्स दिया जावे। अप्रार्थी चौक एक्जीक्यूटिव जयपुर मिनरल डवलपमेंट सिन्डिकेट प्रा. लि. जयपुर की ओर से यूनियन ने स्टेटेमेंट आफ क्लेम का ईतर निम्न प्रकार से पेश किया।

मर्थ प्रथम प्रारम्भिक आपत्तियों इस प्रकार उठाई गईं : यह कि केन्द्र सरकार ने जो विवाद इस न्यायाधिकरण के समक्ष आये अधिनियमावर्ष भेजा है वह गणत है, न तो इस प्रकार का कोई विवाद श्रमिकों की तरफ से प्रबन्धकों के समक्ष प्रस्तुत किया गया ना ही प्रबन्धकों ने ऐसी किसी मांग को अस्वीकार किया। जो विवाद न्याय निर्णायक भेजा गया है। वह औद्योगिक विवाद की श्रेणी में नहीं आता है। आने एतराज किता कि जो विवाद प्रस्तुत किया गया है वह श्री सरयनाथय शर्मा महामंत्री राष्ट्रीय खनन मजदूर कांग्रेस सोप स्टोन माइन्स दबोटा की ओर से प्रस्तुत किया गया है श्री शर्मा राष्ट्रीय खनन मजदूर कांग्रेस सोप स्टोन माइन्स दबोटा के महामंत्री है, या नहीं, इस तथ्य की जानकारी विरुद्धों को नहीं है जो विवाद प्रस्तुत किया गया है वह गणत तरीके से गणत प्रतिनिधित्व के आधार पर प्रस्तुत किया गया है। जो इस आधार पर चलने योग्य नहीं है। यह भी लिखा कि राष्ट्रीय खनन मजदूर कांग्रेस सोप स्टोन माइन्स दबोटा विरुद्ध संस्थान में कोई मान्यता प्राप्त यूनियन नहीं है। इस यूनियन की मान्यता विरुद्धों द्वारा दिनांक 19-3-88 को ही समाप्त कर दी गई है। ऐसी स्थिति में इस आधार पर भी प्रस्तुत क्लेम को कोई औचित्य नहीं है। आने यह भी कहा कि न्यायाधिकरण राष्ट्रीय खनन मजदूर कांग्रेस विरुद्ध संस्थान में कार्यरत अधिलेख श्रमिकों का प्रतिनिधित्व भी नहीं करता है। ऐसी स्थिति में प्रस्तुत विवाद खारिज होने योग्य है। आने यह एतराज दिया कि प्रार्थी यूनियन द्वारा विरुद्ध

प्रबन्धकों के समक्ष इस मद में वर्णित मांग कभी नहीं उठाई जो मांग पत्र प नियत द्वारा प्रस्तुत किया गया था। इस मांग पत्र में भी किन मद में वर्णित मांगों का कोई हवाला नहीं है और ना ही इन समझौता अधिकारी के समक्ष ही इस प्रकार का कोई विवाद उठाया गया था। समझौता अधिकारी ने जो अवसरता प्रविषेदन केन्द्रिय सरकार को प्रस्तुत किया है उनमें भी इस मद में वर्णित मांगों के बारे में कोई हवाला नहीं है वैसे भी अन्डर ग्राउन्ड माइन्स में कार्य करने वाले श्रमिकों के लिये केन्द्रिय सरकार द्वारा न्यूनतम वेतन निर्धारित किया गया है और उनके अनुसार ही किसी संस्थान अर्थात् यहां कार्यरत श्रमिकों का वेतन का चूल्हा फरता है जो न्यूनतम वेतन केन्द्रिय सरकार द्वारा निर्धारित किया गया है। उनमें ही सभी प्रकार के क्लेम सम्मिलित है। प्रार्थी यूनियन को यह मांग को संहार्य करता, बी.डी.ए. मान्यता किया जाता, हाई इम्यूटी अलाउन्स सार्विक अलाउन्स मजदूरों को दिया जावे। उनका न तो कोई औचित्य है और न इस प्रकार के नये विरुद्ध संस्थान अर्थात् मजदूर को दे सकने की स्थिति में है। इस क्षेत्र में अन्य खानों पर कार्यरत मजदूरों को न्यूनतम वेतन अधिनियम के तहत निर्धारित न्यूनतम वेतन ही सम्मिलित प्रबन्धकों द्वारा दिया जा रहा है। वेतन स्टेटेमेंट की पैदा नम्बर 6,7,8, 9,10,11,12, को गलत होने में प्रस्वीकार किया : अतः प्रार्थना की कि प्रार्थी का क्लेम खारिज किया जावे। इस विवाद में दिनांक 29-11-88 को अप्रार्थी नियोजक की ओर से स्टेटेमेंट आफ क्लेम का उत्तर प्रस्तुत किया और आगामी तारीख पेशी 30-12-88 प्रार्थकों के पेश होने के लिये नियत की गई। न तो यूनियन को ओर से कोई उपस्थित हुआ और ना ही यूनियन की ओर से कोई प्रवेक्ष पेश किये गये। यूनियन की ओर से न आने का कोई कारण भी जहूर नहीं किया गया। अप्रार्थी नियोजक की ओर से श्री आर.सी. पाडोवाल अधिकारी ने मिनरल डवलपमेंट सिन्डिकेट प्रा. लि. से चार प्रवेक्षों का फोटो प्रार्थी पेश की गई। प्रार्थी यूनियन का कई मरतबा अवकाश भी मगायी गई मगर यूनियन को ओर से कोई उपस्थित नहीं हुआ। ऐसा प्रतीत होता है कि यूनियन को इस विवाद को आने आने में रुचि नहीं है और वह आने स्टेटस नहीं ले रहे है। इन कारण से कोई विवाद सोप रखा गया है, ऐसा प्रतीत नहीं होता है इत्यादि नोजरा विवाद में नोटिफाइड आवाज दिया जाता है। अर्थात् का प्रतिनि केन्द्रिय सरकार का अन्वयन धारा (7) (1) अधिनियम के तहत प्रमाणनार्थ भेजा जावे।

न्यायाधीश, केन्द्रिय औद्योगिक न्यायाधिकरण, जयपुर

प्राप्त दिनांक 26 मई, 1989

[सं. एच-2901/31/87-ड.एल.एल. (बी)]

नई दिल्ली, 26 मई, 1989

का.प्र. 1319:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रिय सरकार एच.सी.वि. का चांदमारी कारखाने परिधानता, पोस्ट खेतडीनगर, जिला कुल्लु के प्रबन्धन से सम्बन्धित निरोजकों और उनके कर्मकारों के बीच, अर्थात् में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण जयपुर के तबरेत का पत्राचार करता है, जो केन्द्रिय सरकार का (16-5-89) का मांग हुआ था।

New Delhi, the 26th May, 1989

S.O. 1319.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chandmari Copper Project of HCL, Post. Khetrinagar, Dist. Jhunjhunu and their workmen, which was received by the Central Government on 16-5-1989.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर.एच.जे.एम.
केस नं. सी.आई.टी. 39/88।

मध्य :

महामन्त्रि, हिन्दुस्तान कापर मजदूर संघ, ई-70,

कोल्हाट नगर, पा. खेतड़ी, राजस्थान।

एवं :

प्रोजेक्ट प्रबंधक, चांदमारी कापर प्रोजेक्ट थाप एच.सी. लि.

पा. खेतड़ी नगर, जिला झुझुनू।

रेफरेंस अंतर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

उपस्थिति

राजनीति आदि : कोई उपस्थित नहीं
नियोजक की ओर से : कोई उपस्थित नहीं
दिनांक अर्थात् : 15-3-89

प्रार्थी

भारत सरकार के श्रम मंत्रालय के डेस्क अधिकारी ने उनकी अधि-
पूचना सं. 7(1)/मान. II/डी-III (बी)/डी-II(ए) दिनांक 17-1-88 के-
द्वारा अंतर्गत धारा 19(1)(घ) औद्योगिक विवाद अधिनियम 1947
जिसे श्रम अधिनियम कहा जाएगा, निम्न विवाद उम न्यायाधिकरण की
वास्ते अधिनियम हेतु प्रस्तुत किया है :-

“क्या एच सी लि. के चांदमारी कापर प्रोजेक्ट खेतड़ी नगर के
प्रबंधक श्री श्री पी. हुसबंद सेनी को जूनियर फार्मन (माईनिंग)
मया बी.एच.डी. असिस्टेंट के रूप में क्रमशः 22-10-84, 26-9-79
से पदोन्नत न करने को कार्यवाही न्यायोचित है क्योंकि विभागीय
पदावधि समिति काम नहीं हुई थी जबकि आर एण्ड पी नियमों के
अनुसार विभागीय पदावधि समिति द्वारा 75 प्रतिशत तथा सीधी
भर्ती द्वारा 25 प्रतिशत रिक्तियों का भरा जाना था जबकि कामगार
का सीधी भर्ती के माध्यम से नियुक्त किया गया था ? यदि नहीं तो
कामगार किस अनुतोष का हकदार है ?”

2. उदरोक्त विवाद निदेशन को इस न्यायाधिकरण में पंजीकृत किया
जाकर अहमियातन नोटिस दिये गये। यह निदेशन इस न्यायाधिकरण में
2-7-88 को प्राप्त हो गया था उसके पश्चात् दिनांक 4-8-88 को फोर्मेन
की ओर से कोई उपस्थित नहीं आया। जबकि यूनियन की विशेष तौर से
अपना स्टेटमेंट आफ केस प्रस्तुत करने का निर्देश दिया और नोटिस भी
इस न्यायाधिकरण की तरफ से जारी किया गया। तत्पश्चात् 23-9-88
का प्रबंधक चांदमारी कापर प्रोजेक्ट के व्यक्ति प्रहलाद ने दिनांक 23-9-88
को नोटिस प्राप्त किया व मन्त्रि सचिव हिन्दुस्तान कापर मजदूर संघ,
ई-70 कोल्हाट नगर, खेतड़ी के अधिकृत सेम्बर ने दिनांक 30-9-80 को
नोटिस प्राप्त किया उसके पश्चात् भी दिनांक 31-1-89 को पुनः जारी
किया हुआ नोटिस नियोजक की ओर से प्राप्त किये गये। फिर भी प्राज्ञ
कोई पक्षधर उपस्थित नहीं हुआ न ही प्रार्थी यूनियन और न ही प्रबंध-
क की ओर से कोई हथिरी है। वैसे भारत सरकार के डेस्क अधिकारी
ने सीधे ही उभय पक्षधरानों को रेफरेंस को प्रति भेजी है और उसमें
विशेष ओर से ये निदेशन आदेश दिया है कि जिस पार्टी द्वारा यह विवाद
उठाया गया है वह इस न्यायाधिकरण में निदेशन की प्रतिक्रिया प्रार्थित
के 15 दिनों के अन्दर स्टेटमेंट आफ केस जंगन प्रवेक्ष और पत्राहों
को लिस्ट सहित पेश करेगा और उसकी प्रति विपक्षी को अंतर्गत नियम
10(घ) औद्योगिक विवाद (केन्द्रीय) नियम 1957 के तहत भेजेगा
मगर इस निदेशन के पश्चात् भी और इस न्यायाधिकरण द्वारा दो बार
नोटिस निर्माण जान और प्राप्त कर लेने के बाद भी प्रार्थी यूनियन की
ओर से कोई उपस्थित नहीं आया। इनके ऐसा प्रतीत होता है कि

यूनियन को इस विवाद को चलाने में कोई रुचि नहीं है जिसे यह
अनुमान निकाला जाता है कि पक्षधरानों के मध्य कोई विवाद शेष नहीं
रह गया है अतः इस विवाद के संबंध में कोई विवाद नहीं का पंचाट
पारित किया जाता है, जिसे वास्ते प्रकाशनार्थ केन्द्रीय सरकार को अंत-
र्गत धारा 17(1) अधिनियम भेजा जाये।

प्रताप सिंह यादव, न्यायाधीश

[सं. एन-7(1)/86 कान-II/डी III (बी)]

का.आ. 1320.—औद्योगिक विवाद अधिनियम, 1947 (1947
का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार श्री ओम प्रकाश
नैयर्स बजरंग लाल बन्नीलाल गुप्ता, माईन ओनर, सुमेरगंज मण्डी के,
प्रबंधक से सम्बन्धित निरीक्षणों और उनके कर्मचारियों के बीच, अनुबंध में
निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट
को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त
हुआ था।

S.O. 1377.—In pursuance of Section 17 of the Industrial
Disputes Act, 1947 (14 of 1947), the Central Government
hereby publishes the award of the Industrial Tribunal, Jaipur
as shown in the Annexure, in the industrial dispute between
the employers in relation to the management of Shri Om
Prakash, M/s. Bajrang Lal Badrilal Gupta, Mine Owner,
Sumergan mandi and their workmen, which was received by
the Central Government on the 16-5-1989.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर.एच.जे.एम.

केस नं. सी.आई.टी. 7/87

मध्य :

मन्त्रि, पत्थर खान लेबर यूनियन, इन्ड्रगढ़ बून्दो जिला।

एवं :

ओम प्रकाश गुप्ता श्री बन्नी लाल गुप्ता मार्कल श्री बजरंग लाल बन्नीलाल
गुप्ता सुमेरगंज मण्डी, जिला बूंदी।

रेफरेंस अंतर्गत धारा 10 (1) (घ) ओ.वि. अधिनियम एवं अध्याय
2(ए) अध्याय 10 ओ.वि. अधिनियम 1947

उपस्थिति

प्रार्थी यूनियन की ओर से : श्री जयंती लाल शाह
(जिन्होंने हिरायत न होता व्यक्त
किया)

अप्राधी नियोजक की ओर से : कोई उपस्थित नहीं।

दिनांक अर्थात् : 15-3-89

प्रार्थी

भारत सरकार के श्रम मंत्रालय के अध्वर सचिव ने उनकी अधिपूचना
सं. एन. 29011-28/85 डी-III (बी) दिनांक 12-2-87 निम्न विवाद
अंतर्गत धारा 10(1) (घ) औद्योगिक विवाद अधिनियम 1947 जिसे
तत्पश्चात् अधिनियम लिखा जाएगा वास्ते अधिनियम हेतु इस न्यायाधि-
करण को प्रस्तुत किया है :

“क्या श्री ओम प्रकाश नैयर्स बजरंग लाल बन्नीलाल गुप्ता
माईन ओनर सुमेरगंज मण्डी को औद्योगिक विवाद अधिनियम
1947 की धारा 25 (घ) का उल्लंघन करते हुए श्री गोपी लाल
श्री लाहूराम और श्री मांगी लाल सेनी की सेवाओं को 1-2-85
से समाप्त करने की कार्यवाही न्यायोचित है ? यदि नहीं तो ये
कर्मकार किस अनुतोष के हकदार हैं ?”

2. उपरोक्त निदेशन को इस न्यायाधिकरण में दिनांक 16-2-87 को प्राप्त होने पर पंजीकृत किया गया और उभय पक्षकारान को नोटिस जारी करने के आदेश दिये गये। काफी अवसर दिये जाने पर अव्यक्त पक्षर खान लेबर यूनियन इन्डर गढ़ ने आता स्टेटमेंट आफ क्लेम संक्षिप्त में निम्न प्रकार से पेश किया। यह कि पक्षर खान लेबर यूनियन इन्डरगढ़ जिसे पक्षरवाल् यूनियन के नाम से सम्बोधित किया जायेगा एक पंजीकृत यूनियन है और बड़ी जिले में विभिन्न खानों में कार्य करने वाले श्रमिक इस यूनियन के सदस्य हैं। नैसर्ग बजरंग लाल बड़ी लाल खान मालिक सुमेर गंज मण्डी जिला बड़ी खान के मालिक हैं जिन्हें आने विपक्षी लिखा जायेगा श्री गोपीलाल, श्री लादूराम श्री मन्मथ लाल सेनो, प्रार्थी यूनियन के सदस्य हैं जो विपक्षी भी खान पर गत 8 वर्षों से लगातार पीसरेट के रूप में कार्य करते आ रहे हैं जो पक्षर तोड़ने का कार्य करते थे। यह कि श्रमिक गोपीलाल, लादूराम व मन्मथ लाल सेनो को दिनांक 1-2-85 से मौखिक आदेश द्वारा सेवा नुक़्त कर दिया। सेवा समाप्ति के पश्चात् भी ये तीनों श्रमिक रोजाना उनकी इयूटी पर आते रहे मगर उनकी सेवार्थ बहाल नहीं की। तत्पश्चात् श्रमिकों ने पत्र लिखकर उनकी सेवा बहाल करने की मांग की। पक्षवाल् इन तीनों श्रमिकों का यूनियन ने विवाद सहायक श्रम आश्रुत (केंद्रीय) कोटा के समक्ष पेश किया परन्तु वहां समझौता नहीं हुआ और इसे भारत सरकार को असफल प्रतिवेदन पेश किया गया। आगे यह व्यक्त किया गया कि इन तीनों श्रमिकों ने सेवा समाप्ति से पूर्व 240 दिन से अधिक कार्य किया है। और उन्हें सेवा नुक़्त करने से पूर्व तो एक माह का नोटिस दिया गया और न ही एक माह के नोटिस के एवज में एक एक माह का वेतन दिया गया तथा श्रमिकगण को छंटनी का मुआवजा भी नहीं दिया गया है इसलिए उनकी सेवा मुक्ति धारा 25(एफ) अधिनियम के विपरीत की गई जो प्रभावहीन है। यह भी आरोप लगाया कि इन श्रमिकगण से जूनियर श्रमिकों की सेवा समाप्त नहीं की गई इसलिए भी उनकी सेवा समाप्ति अवैध थी और अंत में यह भी आरोप लगाया कि इन तीनों श्रमिकगण की सेवा मुक्ति के बाद नये श्रमिकों को नियुक्त किया गया और उन्हें उनके लिए सूचित नहीं किया गया। अतः प्रार्थना है कि श्रमिकगण श्री गोपीलाल लादूराम एवं मन्मथ लाल सेनो की सेवामुक्ति को अवैध घोषित किया जाये और पिछले पूरे वेतन सहित उन्हें सेवा में बहाल किया जाये। यूनियन की ओर से उक्त स्टेटमेंट आफ क्लेम का जबाब प्रस्तुत नहीं किया गया और दिनांक 13-7-80 को विपक्षी के खिलाफ इकतरफा कार्यवाही किये जाने का आदेश पारित किया गया। श्री जयंती लाल शाह अधिकृत प्रतिनिधि प्रार्थी यूनियन के प्रार्थीगण के पक्ष में बस्तावेजात व साक्ष्य प्रस्तुत करने का आदेश दिया गया परन्तु तीन अवसर दिये जाने के पश्चात् न तो यूनियन की ओर से प्रलेख ही पेश किया और न ही कोई साक्ष्य ही पेश की। यहां तक कि भाज दिनांक 15-3-89 को पुनः कोई साक्ष्य उपस्थित नहीं आई और न ही कोई प्रलेख प्रस्तुत किये। श्री जयंती लाल शाह अधिकृत प्रतिनिधि प्रार्थी यूनियन ने नो इन्स्ट्रक्शन्स प्लीड की। ऐसी सूरत में प्रार्थीगण को साक्ष्य समाप्त की गई। प्रार्थी यूनियन ने जो श्रमिकगण गोपीलाल, लादूराम एवं मन्मथ लाल सेनो की सेवा समाप्ति धारा 25 (एफ, एच और 25 (जी) का उल्लंघन में किया जाना जो स्टेटमेंट आफ क्लेम में व्यक्त किया है उनके संबंध में पत्रावली में कोई साक्ष्य प्रस्तुत नहीं हुई और न ही कोई प्रलेख प्रस्तुत हुआ। अतः प्रार्थी यूनियन के द्वारा जो स्टेटमेंट आफ क्लेम पेश किया है उसे बहु प्रमाणित करने में असफल रहे हैं और प्रार्थी यूनियन कोई अनुतोष पाने के अधिकारी नहीं हैं। अतः प्रार्थी यूनियन के विरुद्ध निम्न अवार्ड पारित किया जाता है कि—

यह कि नैसर्ग बजरंग लाल बड़ी लाल माईत ओनर, सुमेरगंज मण्डी, जिला भीलवाड़ा के द्वारा श्री गोपीलाल, लादूराम एवं श्री मन्मथ लाल की सेवा समाप्ति 1-2-85 को धारा 25(एफ) औद्योगिक विवाद अधिनियम के उल्लंघन में किया जाना प्रमाणित नहीं होता है। इस कारण से इन श्रमिकों की सेवा समाप्ति के संबंध में प्रार्थी यूनियन कोई अनुतोष पाने की अधिकारी नहीं है। अतः उक्त आशय का पंचाट पारित किया

जाता है जिसे वास्ते प्रकाशनार्थ केंद्र सरकार को भर्तगत धारा 17(1) अधिनियम भेजा जाये।

प्रताप सिंह यादव, न्यायाधीश

[म. एल-29011/28/85-डी-III (बी)]

का.या. 1321.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केंद्रीय सरकार मै. गीता ट्रांसपोर्ट कम्पनी, फलोदी क्वारीज, सवाई माधोपुर के प्रबंधन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केंद्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Geeta Transport Co. Phalodi Quarries, Sawai Madhopur and their workmen, which was received by the Central Government on 16-5-1989.

केंद्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 20/85

केंद्र सरकार के श्रम मंत्रालय की अधिसूचना सं. एल-29011 (57)/84-डी-III (बी) दिनांक 26-4-85।

सचिव, भारतीय खान यातायात कर्मचारी संघ, फलोदी, सवाई माधोपुर।

—यूनियन

बनाम

मै. गीता ट्रांसपोर्ट कम्पनी, फलोदी क्वारीज, सवाई माधोपुर।

—नियोजक

उपस्थिति

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर.एच.जे.एम.

यूनियन की ओर से: कोई उपस्थित नहीं

नियोजक की ओर से: कोई उपस्थित नहीं।

दिनांक अवार्ड 5-11-88

अवार्ड

भारत सरकार के श्रम मंत्रालय के अण्डर सेक्रेटरी ने उनकी अधिसूचना सं. एल. 29011 (57)/84-डी-III (बी) दिनांक 26-4-85 के द्वारा निम्न विवाद भर्तगत धारा 10(1) (डी) औद्योगिक विवाद अधिनियम वास्ते अधिनियम इस न्यायाधिकरण को भेजा है।

"Whether the action of the management of M/s. Geeta Transport Co., Loading and Transport Contractors in Phalodi Quarries of M/s. Jaipur Udyog Ltd., Sawai Madhopur in terminating the services of Shri Durga Lal Driver S/o. Shri Badri Lal with effect from 14-9-84 is justified. If not, to what relief Shri Durga Lal, Driver is entitled for?"

2. बाद प्राप्ति निदेशन इस रेकॉर्ड को इस न्यायाधिकरण में पंजीकृत किया गया। उभय पक्षकारान को नोटिस जरिये पंजीकृत डाक भेजे गये प्रार्थी दुर्गालाल ने उसकी सेवा समाप्ति के संबंध में निम्न स्टेटमेंट आफ क्लेम प्रस्तुत किया। यह कि गीता ट्रांसपोर्ट कम्पनी की जयपुर उद्योग लि. सवाई माधोपुर के यहां खानों से पत्थर की दुनाई का काम उनके ट्रक द्वारा करते हैं। कार्यक्षेत्र फलोदी क्वारी जिला सवाई माधोपुर है। आगे यह व्यक्त किया कि प्रार्थी दुर्गालाल उपरोक्त गीता ट्रांसपोर्ट कम्पनी में सेवा समाप्ति के तीन वर्ष पूर्व से इक्काबर के पय पर 520 रुपये प्रतिमाह वेतन पर कार्य करता था। आगे आरोप लगाया कि प्रार्थी के हाजिर रहने

ट्रुप भी नियोजक कभी कभी गैर दायिरी लगा देते थे और वेतन काट देते थे तथा साप्ताहिक अवकाश भी नहीं देते थे जिसके बारे में प्रार्थी ने शिकायत उसकी यूनियन के माध्यम से चीफ मैनेजर माहल जयपुर उद्योग लि. फनीदी बवरी सर्वाइसार्थोपुर व अन्य अधिकारियों को की। इस शिकायत से मारगज हाकर श्री बलराम सिंह जी पार्टनर गीता ट्रांसपोर्ट कम्पनी ने जवानी आवेदन द्वारा बिना मुआवजा व नोटिंग दिये दिनांक 14-9-84 को उसे सेवा मुक्त कर दिया। इस बारे में शिकायत प्रार्थी ने भारतीय मातायात कर्मचारी संघ के सचिव श्री रघुराज मिश्र को की जिन्होंने इस विवाद को चीफ मैनेजर माहल और श्रम विभाग भारत सरकार के समक्ष उठाया। परन्तु समझौता बातों असफल हुई और ये निवेशन केन्द्रीय सरकार द्वारा हम न्यायाधिकरण की सेवा गया। अतः में प्रार्थना की कि उसकी सेवा मुक्ति अनुचित एवं अवैध घोषित की जाये और पछले वेतन व अन्य सुविधा सहित उसकी सेवा बहाल की जाये।

3. मै. गीता ट्रांसपोर्ट कम्पनी फनीदी बवरी ने उनके भागीदार श्री विजय कुमार मूरी के द्वारा निम्न स्टेटमेंट आफ फैसल प्रस्तुत किया। जिसमें स्टेटमेंट आफ फैसल के पैरा सं. 2, 3 को सम्बंधित किया, केवल यह स्वीकार किया कि अप्रार्थी कम्पनी द्वारा दी जयपुर उद्योग लि. सर्वाइसार्थोपुर के यहाँ खानों से पत्थर की लुलाई का काम केवल ट्रकों द्वारा ठेके पर करते हैं। ये भी माना कि उनका कार्य क्षेत्र फनीदी बवरी है। मगर विशेष विवरण में यह व्यक्त किया कि प्रार्थी गीता ट्रांसपोर्ट कम्पनी के नियोजन में से सेवा मुक्ति की तारीख से 3 वर्ष पूर्व से कार्य नहीं कर रहा है वल्कि महीना बात यह है कि प्रार्थी ट्रक नं. आर.जे.यू. 1571 पर कार्य करता था। ट्रक नं. आर.जे.यू. 1571 का पंजीकृत स्वामी भै० पुरुषोत्तम ट्रांसपोर्ट कम्पनी है तथा पुरुषोत्तम ट्रांसपोर्ट कम्पनी ही इस ट्रक पर ड्राइवर, खल्लासी एवं लोडिंग अनलोडिंग को श्रमिक नियुक्त करती है और यही फर्म इनको सेवा मुक्त कर सकती है। नियोजन एवं सेवा मुक्ति से गीता ट्रांसपोर्ट का कोई संबंध नहीं है। आगे यह व्यक्त किया कि ट्रक नं. आर.जे.यू. 1571 अप्रार्थी फर्म के यहाँ अवैध कार्य करता है जिसकी एवज में अप्रार्थी फर्म ट्रक के पंजीकृत स्वामी से निश्चित कमीशन लेती है तथा इसके बदले अप्रार्थी फर्म ट्रक के पंजीकृत स्वामी को ट्रक का मुआवजा रूप से खल्लासे के लिए रुपया की जरूरत पड़ने पर एडवांस पैसा भी देती है। इस प्रकार इस ट्रक पर कार्यरत श्रमिकों को वेतन भत्ते इत्यादि के भुगतान की जिम्मेदारी पुरुषोत्तम ट्रांसपोर्ट कम्पनी की है। आगे यह भी एतराज किया कि पुरुषोत्तम ट्रांसपोर्ट कम्पनी आवश्यक पत्रकार और इसके आवश्यक पत्रकार नहीं होने की मूरत में प्रार्थी का क्लेम चलने योग्य नहीं है। इसे नकारा की अप्रार्थी कम्पनी ने प्रार्थी को कभी नियोजन में रखा हो या नियुक्त किया हो। आगे यह भी बताया कि दिनांक 2-9-85 से अप्रार्थी फर्म को समाप्त करके जयपुर उद्योग लि. का पत्थर की लुलाई का कार्य बंद कर दिया है क्योंकि ठेके की अवधि समाप्त हो चुकी है। प्रार्थी का कोई सेवा बहाली का अधिकार नहीं है न ही वे अन्य कई सुविधायें प्राप्त करने का अधिकारी है। अतः स्टेटमेंट आफ फैसल मय खर्चा खारिज करने की प्रार्थना की।

4. तत्पश्चात् पत्रावली को वापस पेश करने दस्तावेजात के लिए निष्पत्ति किया जाता रहा इसके बावजूद भी कई अवसरों को दस्तावेजात पेश नहीं किये गये और कई मर्तबा अप्रार्थी उपस्थित भी नहीं हुआ। दिनांक 1-7-87 को विपक्षी के उपस्थित न होने के कारण इकरफा कार्यवाही किये जाने का आदेश पारित किया गया। तत्पश्चात प्रार्थी की माध्य के लिए प्रकरण 20-7-87 को प्रार्थी की ओर से उनके अधिकृत प्रतिनिधि देश से उपस्थित आये और पत्रावली दिनांक 2-9-87 को वापस प्रार्थी की माध्य के लिए नियत किया गया और उस रोज भी प्रार्थी की ओर से माध्य पेश करने के लिए समय चाहा गया। उसके पश्चात भी पुनः दिनांक 6-10-87 को प्रार्थी की ओर से प्रलेख व साक्ष्य पेश करने के लिए इस विवाद को 12-1-87 को नियत किया गया-पुनः 12-11-87 को माध्य पेश करने के लिए अवसर लिया गया तत्पश्चात 7-12-87 को प्रार्थी के अधिकृत प्रतिनिधि ने पेशो चाहने बावत प्रार्थना-पत्रपेश किया और उसकी प्रार्थना स्वीकार कर। पत्रावली को 18-1-88

के लिए माध्य पेश करने का मौका दिया गया तत्पश्चात दिनांक 18-1-88, 7-3-88, 13-4-88, 16-5-88, 22-7-88 व 14-9-88 को साक्ष्य पेश करने के लिए अवसर दिये जाते रहे मगर प्रार्थी की ओर से कोई साक्ष्य पेश नहीं किया गया। आज दिनांक 5, नवम्बर 1988 को प्रार्थी की ओर से कोई उपस्थित नहीं आया व कोई साक्ष्य ही पेश किया गया है और न ही कोई प्रार्थना पत्र बावत इन्तवा पेश हुई है। ऐसी मूरत में ऐसा प्रतीत होता है कि प्रार्थी इस विवाद को खताने के लिए रुचि नहीं रखते हैं। और माध्य न पेश करने की मूरत में ऐसा प्रतीत होता है कि कोई विवाद प्रार्थी व अप्रार्थी के बीच नहीं रह गया है अतः इस विवाद के निमित्त में "कोई विवाद नहीं" का प्रवाई पारित किया जाता है, जिससे प्रकाशनाथ केन्द्र सरकार को अवगत धारा 17(1) अधिनियम भेजा जाये।

प्रताप सिंह यादव, न्यायाधीश

[न. एन-29011/57/84-डो-III (बी)]

का० आ० 1322—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुकरण में, केन्द्रीय सरकार श्री विमल कुमार, माइन ओवर, लाखेरी, बूंदी (राजस्थान) के प्रबन्धतन्त्र से संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1322.—In pursuance of & Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Shri Vimal Kumar, Mine Owner, Lakheri, Bundi (Raj.) and their workmen, which was received by the Central Government on the 16-5-1989.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायधिकरण, जयपुर।

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर० ए० जे० एम्० केम नं० सी० आई० टी० 64/87

मध्य

प्रजिजेंट, पत्थर श्रान लेबर यूनियन, हस्सगढ़, बूंदी।

—यूनियन

एवं

श्री विमल कुमार माइन ओवर, बाटम लेबर, लाखेरी, बूंदी।

—नियोजक

उपस्थिति ३

यूनियन की ओर से
नियोजक की ओर से:
दिनांक अर्थात्

कोई उपस्थित नहीं।
श्री विमल कुमार
9-12-88

प्रवाई

केन्द्र सरकार के श्रम मंत्रालय के डेप्टी अधिकारी श्री बी० के० शर्मा ने उनकी अधिसूचना नं० एन-29012/21/87--डी-3 (बी) दिनांक 25-8-87 के द्वारा औद्योगिक विवाद अधिनियम, 1947, (जिसे आगे अधिनियम कहा जायेगा,) की धारा-10(1)(घ) संपठित उपधारा (2क) के अंतर्गत वास्तविक अधिनियम इस न्यायधिकरण को भेजा हो—

"क्या विमल कुमार, माइन ओवर, लाखेरी, बूंदी (राजस्थान) के प्रबंधक श्री अनुशान कर्मचार (यूनी) श्रीमती कल्याणी वादी की सेवाये 25-2-1987 से समाप्त करने की कार्यवाही वैध और न्यायोचित है? यदि नहीं तो कर्मकार किस अनुताप की हकदार है।"

2. बाबू प्राप्ति निदेशन इस न्यायाधिकरण में पंजीकृत किया गया। उभय पक्षकारान को नोटिस पंजीकृत डाक द्वारा दिये गये। अध्यक्ष पत्थर खान लेबर यूनियन इन्द्रगढ़ जिला बूखी द्वारा दिनांक 26-9-88 को नोटिस प्राप्त हो गया और बाबजूब नोटिस प्राप्ति को आज तक स्टेटमेंट आफ क्लेम प्रस्तुत नहीं किया। आज भी प्राप्ति यूनियन की ओर से कोई उपस्थित नहीं आया। अप्राप्ति नियोजक श्री विमर कुमार उस समय के खान मालिक स्वयं उपस्थित आये हैं जिन्होंने लिखित में दिया कि श्रीमती कल्याणी बाई उनकी खान पर से स्वयं काम छोड़ कर चली गई थी परन्तु वह 1-10-87 को वापिस आकर काम करने लग गई थी। उसको उन्होंने 7-11-87 को पूरा पेमेण्ट कर दिया था और उसके बाद उन्होंने खान दूसरे को सौंपता दी थी अतः अब कोई विवाद शेष नहीं है।

3. बाबजूब नोटिस प्राप्ति के पत्थर खान लेबर यूनियन इन्द्रगढ़ की ओर से कोई उपस्थित नहीं आया जिससे विदित है कि प्राप्ति यूनियन इस विवाद को चलाने में कोई रुचि नहीं रखती है और इस प्रकार आठ पेशियां देने के पश्चात् यूनियन की ओर से कोई उपस्थित नहीं आया है। इससे यही अनुमान निकाला जा सकता है कि प्राप्ति यूनियन और खान मालिक बिमल कुमार के बीच कोई विवाद शेष नहीं रह गया है अतः इस रिकॉर्ड के संदर्भ में कोई विवाद नहीं का अवार्ड पारित किया जाता है, जिसे प्रकाशनार्थ केन्द्र सरकार का अंतर्गत धारा 17 (1) अधिनियम 1947 के, भेजा जाये।

प्रताप सिंह यादव, न्यायाधीश

[सं० एल-29012/21/87—डी III (बी)]

का० आ० 1323:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दरीबा कॉपर प्रोजेक्ट, पो० ओ० दरीबा, जिला अलवर के प्रबंधन से संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dariba Copper Project, P. O. Dariba Distt. Alwar and their workmen, which was received by the Central Government on the 16-5-1989.

ANNEXURE

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर।

कम नं० सी० आई० टी० 58/87

केन्द्र सरकार अम मंत्रालय का अधिमूचना
सं० एल (2)/86

दिनांक 7-8-87

जनरल सैफेदी, कापर मजदूर यूनियन, पो०
ओ० दरीबा, अलवर।

—यूनियन

बनाम

प्रोजेक्ट मैनजर, दरीबा कापर प्रोजेक्ट, दरीबा

—नियोजक

उपस्थिति

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर० एच० जे० एस०

यूनियन की ओर से : श्री रामसिंह
नियोजक की ओर से : श्री मनोज शर्मा
दिनांक अवार्ड : 1-10-88

अवार्ड

केन्द्र सरकार निम्न विवाद इस न्यायाधिकरण को वास्तविक अधिनियम हेतु अपनी अधिसूचना सं० L(2)/86 Cons. II/D-III(B)/DIV(A) दिनांक 7-8-87 के द्वारा औद्योगिक विवाद अधिनियम, 1947 की धारा 10(1) की एवं धारा 10 की उपधारा 2 (ए) के अंतर्गत प्रेषित किया है :

“Whether the action of the management of Dariba Copper project P.O. Dariba Distt. Alwar in not promoting Shri Ram Sher as Electrician ‘C’ in the vacant post in violation of Memorandum of Settlement dt. 27-3-1980 clause 4.2 of annexure-VII is justified, proper and legal? If not, to what relief the workman is entitled?”

2. यह निर्देशन इस न्यायाधिकरण में दिनांक 31-8-87 को प्राप्त हुआ, जिसे पंजीकृत किया गया। उभय पक्षकारान को नोटिस पंजीकृत डाक से जारी किये गये। यूनियन पक्ष की ओर से दिनांक 21-10-87 को श्री एम० एफ० वेग अधिकृत प्रतिनिधि उपस्थित आये जिन्होंने स्टेटमेंट आफ क्लेम प्रस्तुत करने के लिए समय चाहा। तत्पश्चात् दिनांक 15-12-87, 18-1-88, 15-3-88, 22-4-88, 11-5-88, 7-7-88 एवं 18-8-88 को स्टेटमेंट आफ क्लेम पेश करने के लिए अवसर चाहे जो प्रदान किये गये। दिनांक 15-12-87 को अप्राप्ति नियोजक की ओर से श्री मनोज शर्मा व उनके साथ श्री शिवासिंह अधिवक्ता उपस्थित आये। जिन्होंने अपना वकालतनाम प्रस्तुत किया और आज तक वे विपक्षी की ओर से उपस्थित आते रहे हैं। इस प्रकार 8 अवसर दिये जाने के पश्चात् भी यूनियन की ओर से स्टेटमेंट आफ क्लेम प्रस्तुत नहीं किया गया है। आज यूनियन की ओर से श्री रामसिंह जनरल सैफेदी कापर हिन्दुस्तान यूनियन दरीबा जिला अलवर उपस्थित आये। जिन्होंने आज भी स्टेटमेंट आफ क्लेम प्रस्तुत नहीं किया और यह जाहिर किया कि इस विवाद में “नो डिस्पूट अवार्ड” पारित किया जाये। वे भी 8 अवसर दिये जाने के पश्चात् भी यूनियन की ओर से कोई स्टेटमेंट आफ क्लेम प्रस्तुत नहीं किया गया है जिससे भी यह विदित है कि प्राप्ति यूनियन को इस विवाद को चलाने में कोई रुचि नहीं है या कोई विवाद शेष नहीं रह गया है। इस प्रकार अनेक अवसर दिये जाने के बाद भी कोई क्लेम पेश नहीं किया गया है इसलिए मौजूदा विवाद में “नो डिस्पूट अवार्ड” पारित किया जाना है। इसकी सूचना केन्द्रीय सरकार को वास्तविक प्रकाशनार्थ अवार्ड अंतर्गत 17(1) औद्योगिक विवाद अधिनियम 1947 भेजी जाये।

प्रताप सिंह यादव, न्यायाधीश

[सं० एल—7(2) 86-कम० II/डी. III (बी)]

वी के० शर्मा, ईस्ट अधिकारी

नई दिल्ली, 16, मई, 1989

का० आ० 1324 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार संसद भारत कोकिंग कोल लि० की अंगारपाथरा कोलियरी के प्रबंधन से संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं० 1) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-5-89 को प्राप्त हुआ था।

New Delhi, the 16th May, 1989

S.O. 1324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. I, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Angar Pathra Colliery of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 4-5-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 81 of 1988

PARTIES :

Employers in relation to the Management of Angarpathra Colliery of M/s. B. C. C. Ltd., Dhanbad.

AND

Their Workman.

APPEARANCES :

For the Employers : Sri P. Jha, Dy. Personnel Manager, Katras Area.

For the Workman : Sri Karu Ram, General Secretary, Dalit Mazdoor Sangh.

STATE : Bihar

INDUSTRY : Coal

Dated, the 28th April, 1989

AWARD

The present reference arises out of Order No. L-20012/78/88-D-3(A) dated 18-7-88, passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :—

"Whether the demand of Dalit Mazdoor Sangh, Dhanbad that dependent of Late Karu Bhuiyani, Casual Wage Loader of Angarapathra Colliery of M/s. Bharat Coking Coal Limited, Dhanbad be offered employment under Clauses 10.4.2 of NCWA II is justified? If, yes, to what relief is the workman entitled?"

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be made on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and make an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under section 15 of the Industrial disputes Act, 1947.

S. K. MITRA, Presiding Officer

[No. L-20012/78/88-D. III(A)/IR (Coal-I)]

BEFORE THE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I AT DHANBAD

Reference No. L-20012/78/88-D-3A

Employers in relation to the management of Angarpathra Colliery of M/s. B. C. C. Ltd

AND

Their workman.

The humble petition on behalf of the parties to the above reference most respectfully sheweth :—

1. That, without prejudice to the respective contentions of the parties, the dispute has been amicably settled between the parties on the following terms :—

Terms of Settlement

- (a) That, Sri Ram Kishun Bhuia, the dependent son of the deceased workman named Kari Bhuini, a casual wagon loader will be given employment as "Temporary" Miner/Loader (as a special case) after he reports for his duties alongwith the certificates and documents mentioned hereinafter within 30 days from the date of this settlement.
- (b) That, the said dependent son should be below 35 years of age and should be medically examined by the Area Medical Board and if found fit to work as "Temporary" Miner/Loader, he shall be provided employment as "Temporary" Miner/Loader.
- (c) That, the said dependent son will submit the certificate from the Mukhia/BDO of the local Area within whose jurisdiction his village is situated together with an affidavit indicating that he is the real dependent son of late Kari Bhuini on whose behalf the union has raised the dispute.
- (d) That, he will submit a certificate from the Secretary of the Union raising the present dispute certifying that he is the dependent son of Late Kari Bhuini on whose behalf the present dispute has been raised.
- (e) That, in case it will be found that the said person made false declaration on the certificate regarding his identity the services of the said person will stand automatically terminated and criminal case will be instituted against the said person.

2. That, in view of the settlement, there remains nothing to be adjudicated.

It is, therefore, humbly prayed that the Hon'ble Tribunal will graciously pleased to pass the Award in terms of settlement.

For the Worker.

Sd. /-

(Karu Ram)

General Secretary,

Dalit Mazdoor Sangh.

L.T.I.

(Ram Kishun Bhuia)

Witness

Sd. /-

Secretary, Dalit Mazdoor Sangh.

For the Employer

(P. Jha)

Dy. Personnel Manager

Katras Area.

नई दिल्ली, 17 मई, 1989

का. घा. 1325.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सेमर्स भारत कोलिय कोल लिमिटेड की मुदीआत कोलिबरी के प्रबंधन में संवाद नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2), बनारस के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-1989 को प्राप्त हुआ था।

New Delhi, the 17th May, 1989

S.O. 1325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Mudidih Colliery of M/s. Bharat Coking Coal Limited and their workmen, which was received by the Central Government on the 9-5-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 28 of 1986

In the matter of an industrial dispute under section 10(1)(d)
of the I. D. Act., 1947.

PARTIES :

Employers in relation to the management of Mudidih
Colliery of M/s. BCCL and their workmen.

APPEARANCES :

On behalf of the workmen—Shri J. P. Singh, Advocate.

On behalf of the employers—Shri B. Joshi, Advocate.
STATE : Bihar INDUSTRY : Coal

Dated. Dhanbad, the 1st May, 1989

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(80)/85-D. IV(B), dated, the 27th December, 1985.

SCHEDULE

"Whether the demand of the Union for employment of Smt. Parbatia Bhuini and 40 others delisted casual wagon loaders (as per annexure) of Mudidih Colliery of M/s. BCCL is justified? If so, to what relief the workmen are entitled?"

The case of the workmen is that the 41 concerned workmen were working in Mudidih Colliery of M/s. BCCL as casual wagon loaders since the time of the erstwhile management. All of a sudden the names of the concerned workmen were struck off from the rolls of the colliery without assigning any reason to them. The management vide letter dated 27/28-8-84 admitted that the names of the concerned workmen were struck off from the rolls of the colliery. Shri B. N. Jha, Personnel Manager of BCCL vide the said letter also requested the union to submit the list of the concerned workmen in order to process and expedite the settlement of their case and a list of the concerned workmen was complied with by the union. The management had informed the union earlier during the discussion held on 20-7-84 that as per policy decision of the company it was not possible to provide employment to the female wagon loaders and that the case of male casual wagon loader would be examined as per guideline and if the case of the concerned workmen fitted into the guideline, his case would be expedited on its merit. The said matter was taken up by the union several times in mutual discussion between the union and the management but with no result. Thereafter the union raised an industrial dispute regarding the concerned workmen before the ALC(C), Dhanbad who took up the matter in conciliation. The conciliation ended in failure and thereafter the present industrial dispute was referred to this Tribunal for adjudication. The management deliberately delayed in the decision of the case of the concerned workmen. The action of the management in not providing employment to the concerned workmen is illegal, arbitrary and unjustified. On the above facts the union prayed on behalf of the concerned workmen that the concerned workmen are entitled to employment and other benefits from the date their names were struck off from the rolls of the colliery.

The case of the management is that the union is making attempt to induct strangers into the employment of the management taking undue advantage of industrial litigation and the union's privileged position. The concerned workmen were never employed as casual wagon loaders and as such there was no question of their delisting them at any time.

There was no relationship of employer and employee between the management and the concerned workmen. Even if it is assumed that the concerned workmen had worked as casual wagon loader on some occasion and were delisted, they have no right to claim for employment under the management. Prior to the nationalisation of Coal Mines, 1973 there used to be lot of difficulties in loading of wagons on the days when more than average number of wagons used to be supplied and casual wagon loaders used to be employed on those days. After amalgamation of small colliery into bigger units and with improved position of regular wagon supply it became possible to make more casual wagon loaders permanent and those casual wagon loaders completing 240 days attendance in a calendar year were made permanent. With the introduction of mechanical loading by pay loaders the scope for employment of casual wagon loaders has been considerably reduced and presently there is no scope for employing the concerned workmen as casual wagon loaders in the colliery. With intent to give some relief to the delisted and unlisted casual wagon loader who had put minimum of 75 days attendance in any calendar year, a circular dated 4-8-80 was issued to enrol them as badli miner/loaders for employment in the mine in place of permanent miner/loaders during leave and sick vacancies. The matter was settled in 1980 and 1981 and only male members out of the delisted and unlisted casual wagon loaders having put in 75 days of attendance in any calendar year, as per the above circular and who offered for the job of badli miner/loaders were kept on the badli list. The concerned workmen never offered for the jobs of badli miner/loaders in 1980 or 1981 and their case were not considered. It is further stated by the management that it has invited applications through Employment Exchange for recruitment of some miners/loaders and male members amongst the concerned workmen may apply for the same and their case may be favourably considered provided they will be found suitable for the same by the selection committee. So far as female workers are concerned they have no scope for employment in underground mines because of prohibition under the Mines Act 1952. On the above facts it is submitted on behalf of the management that the concerned workmen are not entitled to any relief.

The points for decision in the case are :—

- (1) Whether the demand of the union for employment of the concerned 41 delisted wagon loaders is justified?
- (2) Whether the concerned workmen had completed attendance of more than 75 days in a year prior to the stoppage of their work?

The workmen have examined four witnesses. The management did not examine any witness. The documents of the workmen are marked Ext. W-1 to W-6.

Point No. 1 & 2

It will appear on perusal of annexure A to the schedule of order of reference (English version) that the male concerned workmen of Bhuia caste have all been described as Bhuini except Sl. No. 1 Parbat Bhuini who is a female concerned workman. The Hindi Version of schedule to the order of reference is clear and does not describe the Bhuia concerned workmen as Bhuini. Moreover, even in the English version of Annexure-A the concerned workmen describe as Bhuini are stated as "Mr". It is clear therefore that the description of some of the concerned workmen as Bhuini is incorrect and the correct names of the concerned workmen have been stated in the Hindi Version of the schedule of the order of reference.

Point No. 1 and 2 are inter connected and as such they will be discussed together for the sake of convenience.

The workmen have examined WW-1 Suresh Bhuia and WW-4 Bijoy Rabidas who are 2 of the concerned workmen. WW-3 Shri Karu Ram is the General Secretary of Dalit Mazdoor Sangh who had sponsored the present industrial dispute. WW-2 Dinesh Singh had also worked as casual wagon loader in 1973-74 in Mudidih colliery and he was also stopped work along with the concerned workmen and he was subsequently given employment as badli miner in 1976.

WW-1 and WW-4 have stated that they were working in Mudidihi colliery as wagon loader. WW-1 has stated that he was working as wagon loader in Mudidihi Colliery since 3 years prior to the nationalisation of the colliery and that the management stopped work of the 41 concerned workmen who are working as wagon loaders. He was unable to say as to when BCCI had taken over Mudidihi colliery. Admittedly he has no paper with him, such as, Bonus card, Wage slip etc. to show that he was working in Mudidihi colliery. He also does not remember the name of the officer under whom he had worked. WW-4 Bijoy Rabidas has stated that he was working in Mudidihi colliery since 1969 and that he said colliery was nationalised in 1971. He has stated that he worked on Mudidihi colliery as wages loader till 1973 and that in December, 1973 his work was stopped along with the work of the other concerned workmen. He has stated that they were getting bonus and that he possesses the bonus card with him but he has not produced the bonus card. He has further stated that he has no other paper with him to show that he was working as a wagon loader in Mudidihi colliery. WW-3 Shri Karu Ram had never worked in Mudidihi colliery. He has accepted that he has no paper with him to show since when the concerned workmen were working as wagon loader. He has stated that the delisted casual wagon loader who had completed 75 days of attendance during the period from 1973 to 1975 were given employment as badli miner/loader. He has stated that in 1981 the concerned workmen had applied to the management for giving them employment as badli miner/loader on the basis of circular of 1980. Thus WW-3 is not a competent witness to say as to whether the concerned workmen were working as casual wagon loader in Mudidihi colliery and he also could not say about their attendance. WW-2 has stated that he was delisted casual. He had not received any identity card as none of the delisted casuals had been given identity card. He used to get the amount of bonus after signing a register and he used to get the wages through voucher. He has also stated that all the persons who had applied along with him for employment after their stoppage of work were given work as badli miner/loader. He has further stated that about 40 to 50 persons had applied and appeared before the management at that time and out of them about 10 persons were given the job of badli miner/loader along with him. Thus there is no documentary evidence produced on behalf of the workmen to show that they had worked as casual wagon loader or as to what was their attendance in the years they had worked. However, it is clear from the evidence of WW-2 that the bonus used to be paid after obtaining the signature of the casual wagon loader in a register and that their wages was paid through vouchers and also that they had not received any identity card. Thus all papers concerning the casual wagon loaders were in the custody of the management and it was not possible for the workmen to produce those registers themselves. However, by their petition dated 16-7-87 the copy of which was received by Shri B. Joshi representing the management, the workmen had called for certain documents from the management. The documents called for by the said petition by the workmen was the original wage register of permanent and casual wagon loaders from 1970 to 1984, original quarterly bonus payment register of permanent and casual wagon loaders from 1970 to 1984, list of permanent wagon loaders from 1970 to 1984, number of permanent casual wagon loaders who loaded wagons from 1970 to 1984 and some other documents but the management did not file any of those documents nor any explanation was submitted on behalf of the management as to why those documents were not being produced before the Tribunal as called for by the workmen. It is apparent therefore that the management is suppressing the documents and they could have at least produced those documents in connection with the casual wagon loaders so that we could come to a conclusion as to whether the concerned workmen had ever worked as casual wagon loader in Mudidihi Colliery and also to show the days of attendance of their work in Mudidihi colliery. In view of any explanation an adverse inference had to be taken against the management and it appears that the management is not producing those documents as that would reveal the names of at least some of the concerned workmen who had worked as casual wagon loader in Mudidihi Colliery prior to 1974.

The workmen had filed a list of the concerned workmen along with the attendance for the year 1973 before the ALC(C) Dhanbad. The list of workmen Ext. W-6 which was filed by WW-3 to the ALC(C) raising the industrial 1377 GI/89-3.

dispute shows that 22 of the concerned workmen had attendance of 75 days or more in the year 1973 and they are Sl. No. 2, 5, 10, 13, 14, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 38, 40, and 41 of the annexure to the schedule of the order of reference. Thus according to the said list itself it will appear that only the concerned workmen whose Sl. No. has been stated above had worked for 75 days or more as wagon loader in Mudidihi colliery in 1973 and the rest of the 19 concerned workmen had got attendance of less than 75 days and as such those 19 concerned workmen have absolutely no case so that it may be considered whether they can get advantage of the circular of 1980.

During the course of hearing of the case and from the evidence adduced on behalf of the workmen it will appear that the concerned workmen have based their claim for employment on the basis of the circular of 1980. The circular of 1980, as admitted by WW-3, shows that the delisted casual wagon loader who had completed 75 days of attendance during the period from 1973 to 1975 were given employment as badli miner/loaders. WW-3 further stated that in 1981 the concerned workmen had applied to the management for giving them employment as badli miner/loader on the basis of circular of 1980. It is clear therefore that the basis of the entire case is the circular of 1980 by which the delisted casual wagon loader who had completed 75 days of attendance during the year 1973 could be enrolled as badli miner/loader for giving employment. The management in para 6 of the W.S. have stated that it intended to give some relief to the delisted and unlisted casual wagon loader who had put minimum 75 days of attendance in any calendar year. A circular dated 4-8-80 was issued to enroll them as badli miner/loader for employment in the mine to work in place of permanent miner/loaders during their leave and sick vacancies and that only those out of delisted and unlisted casual wagon loaders having put in 75 days of attendance in any calendar year who offered for the job for badli miner/loader were kept in the badli list. Thus the fact that the delisted casual wagon loader who had completed 75 days of attendance or more were enrolled as badli miner/loaders for employment in accordance with the circular of the management dated 4-8-80. The list Ext. W-6 which was filed by the workmen before the ALC(C) has given the attendance of the concerned workmen and as already discussed above it will appear that the 22 of the concerned workmen had completed attendance of 75 days or more in the year 1973 and as such according to the said circular of 1980 those 22 concerned workmen deserve to be enrolled as badli miner/loaders for employment in the mine. The management has not produced any document to controvert the fact that the attendance of the 22 concerned workmen or other concerned workmen as shown in Ext. W-6 is not correct. The management who had in their possession the documents relating to the attendance, payment of wages register and payment of bonus Register etc. could have been filed by the management to show that the names of the concerned workmen and their attendance in Ext. W-6 was not correct. It was imperative on the part of the management to file the documents which were in their possession when it was called for by the workmen. The workmen were unable to file those documents as they were not in their possession. I would therefore hold that the 22 concerned workmen whose Sl. No. I have stated above were working as casual wagon loaders in Mudidihi colliery in 1973 and that they had attendance of 75 days or above and as such their case is covered by the circular of the management dated 4-8-80 and they are entitled to be enrolled as badli miner/loaders for employment in the mine. I further hold that the demand of the 22 concerned workmen for employment after being enrolled as badli miner/loader is justified. Thus these two points are accordingly decided.

In the result, I hold that the demand of the union for employment of 22 concerned workmen named in Sl. No. 2, 5, 10, 13, 14, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 38, 40 and 41 of the schedule to the order of reference for being enrolled as badli miner/loader is justified and consequently the management is directed to enroll the above 22 concerned workmen as badli miner/loader for employment in the mine as per circular dated 4-8-80 within one month from the date of publication of the Award in the Gazette of India. As the 22 concerned workmen have only

proved the right of their being enrolled as badli miner/loader for employment in the mine in place of permanent miner/loaders going on leave the above 22 concerned workmen will not be entitled to any back wages.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-24012/80/85-D. IV (B)/IR (Coal-I)]

ANNEXURE A

Sl. No.	Name of the workman.
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- | | |
|-----|-----------------------|
| 1. | Smt. Parbatiya Bhuini |
| 2. | Mr. Yogeshwar Singh. |
| 3. | Mr. Sitaram Bhuia |
| 4. | Mr. Dashrath Bhuia |
| 5. | Mr. Jamuna Bhula |
| 6. | Mr. Loktan Rajwar |
| 7. | Mr. Tawarih Ansari |
| 8. | Mr. Budhan Bhula |
| 9. | Mr. Rajesh Singh |
| 10. | Mr. Ramesh Bhuia |
| 11. | Mr. Shankar Bhuia |
| 12. | Mr. Rajendra Bhula |
| 13. | Mr. Sajdev Bhula |
| 14. | Mr. Ram Nath Singh |
| 15. | Mr. Ugan Turi |
| 16. | Mr. Motilal Bhula |
| 17. | Mr. Bhuneswar Bhuia |
| 18. | Mr. Kara Bhuia |
| 19. | Mr. Rajesh Mahto |
| 20. | Mr. Baldev Bhula |
| 21. | Mr. Sirajuddin Ansari |
| 22. | Mr. Arjun Bhula |
| 23. | Mr. Bhuneswar Bhula |
| 24. | Mr. Saudagar Bhuia |
| 25. | Mr. Akhtar Hussain |
| 26. | Mr. Keshav Bhula |
| 27. | Mr. Suresh Bhuia |
| 28. | Mr. Muhammed Aizij |
| 29. | Mr. Kartik Bhula |
| 30. | Mr. Parmeshwar Saw |
| 31. | Mr. Lakhon Chowdhury |
| 32. | Mr. Hemlal Bhula |
| 33. | Mr. Moh. Naim Haq |
| 34. | Mr. Balkishan Nausiya |
| 35. | Mr. Moh. Pag. Zahmed |
| 36. | Mr. Charogi Munshi |
| 37. | Mr. Umesh Sharma |
| 38. | Mr. Vijay Ravidas |
| 39. | Mr. Jethu Bhula |
| 40. | Mr. Vineshwar Bhula |
| 41. | Mr. Jawahar Bhula |

I. N. SINHA, Presiding Officer

नई दिल्ली, 24 मई, 1989

का० प्रा० 1326. ---औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, यैसमें भारत कोकिंग कोल लिमिटेड की लोयाबाद कोलियरी के प्रबंधन में संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं० 1), अनुवाद के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-5-1989 को प्राप्त हुआ था।

New Delhi, the 24th May, 1989

S.O. 1326.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Management of Loyabad Colliery of M/s Bharat Coking Coal Ltd., and their workmen, which was received by the Central Government on the 17-5-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 56 of 1984

PARTIES :

Employers in relation to the management of Loyabad Colliery of M/s. Bharat Coking Coal Ltd.

AND

Their Workmen

APPEARANCES :

For the Employers : Shri G. Prasad, Advocate.

For the Workmen : Shri S. Bose, Secretary, Rashtriya Colliery Mazdoor Sangh.

STATE : Bihar.

INDUSTRY : Coal

Dated, the 10th May, 1969

AWARD

By Order No. L-20012(114)/84-D. III (A) dated the 18th August 1984, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication :

"Whether the management of M/s Bharat Coking Coal Ltd., Loyabad Colliery is justified in not giving promotion to Shri T. D. Ghose in Technical Grade 'A' (Supervisor) with effect from the date from which his juniors Shri N. C. Banerjee and U. N. Singh were promoted in Technical Grade 'A' in 1980? If not, to what relief the workman concerned is entitled and from what date?"

2. The case of the management of M/s. Bharat Coking Coal Ltd., Loyabad Colliery, as appearing from the written statement submitted by the General Manager, Sijua Area No. V on behalf of the employer, details apart, is as follows.

The present reference is not legally maintainable either in law or on facts. Retrospective effect can be given to an award prior to the date on which specific demand which resulted in industrial dispute was made. In the present case the demand was made by the sponsoring union, namely, Rashtriya Colliery Mazdoor Sangh, the union of the workmen on 3-8-83 through A.L.C.(C), Dhanbad and so no retrospective effect can be given to the award for any period prior to that date.

Promotion is a function of the management and it can not be claimed as a matter of right. The question whether a particular employee should be promoted from one grade to higher grade depends not only on the length of service but also on his efficiency and other qualification, schemes/rules framed for promotion by the employer for the post to which he seeks to be promoted. In the absence of clear proof of malafides or victimisation or unfair labour practice on extant grounds on the part of the management it is wholly inappropriate for any outside authority to attempt to weight relevant merits of the individual who might be holding higher post and those who are aspiring for the same.

Moreover, determination of the size of the working force is the exclusive right of the employer and no post can be created to accommodate an employee.

M/s. Bharat Coking Coal Ltd. has a well laid down cadre scheme for promotion of workmen working in different discipline like workmen working in non-finance disciplines workmen working in finance stores discipline, workmen working in technical discipline and such others. Promotion is made in accordance with the policy/schemes applicable to each discipline as the nature of job performed by workmen of different disciplines differ and there exists separate seniority list for each discipline. 'T. D. Ghose, the concerned workman, belongs to Clerical Grade of non-finance discipline, whereas S/Shri N. C. Banerjee and U. N. Singh belong to finance/stores discipline and, therefore, no comparison can be made between a personnel belonging to clerical (non-finance) discipline and a personnel belonging to finance/stores discipline. N. C. Banerjee has been working as an Office Supdt. at Sijua Area and U. N. Singh has been working as Sr. Purchase Assistant in the Area Office, while T. D. Ghose, concerned workman, has been working as a Head Time Keeper in Loyabad Colliery. The duties performed by S/S Banerjee and Singh are different from those performed by the concerned workman. In the clerical grade there are as many as 24 persons who are senior to the concerned workman and their cases can not be ignored to suit the convenience or to meet the demand of the concerned workman. The seniority list of all the special grade clerks working in non-finance discipline in M/s. B.C.C.L. was published long ago by letter dated 27/30-7-1979 and copies thereof were served on all the persons named therein. The concerned workman was well aware that he was in non-finance discipline and he ranked 24th in the order of seniority but in spite of this neither he nor his union raised any dispute. It is too late now for him to raise a dispute that since persons from finance/stores disciplines have been promoted, he should be promoted or that his claim for promotion in technical Grade 'A' (Supervisory) with effect from the date S/Shri N.C. Banerjee and U. N. Singh were promoted is not tenable either in law or on facts. It is submitted that there is no merit in the case of the concerned workman and so the instant reference be answered accordingly.

3. Neither the concerned nor the sponsoring union, namely, Rashtriya Colliery Mazdoor Sangh, submitted any written statement in support of the demand although ample opportunity was given. However, from the tenor of the reference it appears that the demand of the concerned workman and his union is for promotion of the concerned workman in Technical Grade 'A' (Supervisory) with effect from the date his juniors S/Shri N. C. Banerjee and U. N. Singh were promoted in Technical Grade 'A' in 1980. According to the union and the concerned workman the action of the management is not justified in not promoting him to Technical Grade 'A' (Supervisory) in the context of the fact that his juniors S/S. N. C. Banerjee and U. N. Singh were promoted in Technical Grade 'A' in 1980.

4. The parties arrayed have neither adduced any oral or documentary evidence.

5. Shri G. Prasad, learned Advocate for the management has contended that the schedule to the terms of reference is indicative of the fact that the question of promotion of the concerned workman should be considered by this Tribunal from 1980. According to him such specification in the schedule gives rise to the question as to whether an award can be given effect to retrospectively prior to the date on which specified demand was made. He has submitted that in the present case specific demand was made by the sponsoring union on 3-8-83 and so the Tribunal can at best give effect to its award with effect from 3-8-1983 and not to any date prior thereto. Since in his view no retrospective effect can be given to an award for any period prior to the date on which specific demand was made.

Industrial adjudication has generally treated the date of demand and the date of award as two extreme points for fixing the date on which the award should come into operation. However, adjudicator has discretion to fix any intermediate date depending upon the circumstances of the case. But no

general rule can be laid down as to the date on which an award should be made effective. The date of operation of an award is generally fixed by the Tribunal on the consideration of the totality of the facts and circumstances of the case.

6. Shri Prasad has further contended that promotion is a function of the management and it is wholly inappropriate for any outside authority to impose upon the decision on the management in the matter. Indeed, the promotion is a function of the management, but nevertheless the Tribunal has got every jurisdiction to probe into the matter when there is allegation of malafides or blatant discrimination or unfair labour practice resorted to by the management. In the present case, however, there is no vestige of material on record to indicate that the management's action is malafide or that it has resorted to blatant discrimination or unfair labour practice in the matter of promotion of the concerned workman.

7. The case of the management is that it has got specific scheme for promotion for workmen working in different disciplines, viz., workmen working in non-finance discipline, workmen working in finance/stores discipline and workmen working in technical discipline and so on and that promotion is made in accordance with the policy/scheme applicable to each discipline as the nature of job performed by these workmen differ and there exists separate seniority list for each discipline. No controversy has been raised over these statements of facts.

8. According to the management, the concerned workman belongs to Clerical Grade of non-finance discipline whereas S/Shri N. C. Banerjee and U. N. Singh belong to finance/stores discipline and therefore, no comparison can be made between the concerned workman on one side and S/Shri N.C. Banerjee and U.N. Singh on the other. These statement of facts have not been assailed either by the sponsoring union or the concerned workman.

9. It is the further case of the management that seniority list of all special grade clerks working in non-finance discipline in M/s. B.C.C.L. was published by letter dated 27/30-7-79 and copy thereof was served on all persons concerned including the concerned workman and that according to the seniority list rating the position of the concerned workman was 24. This statement of facts has not been assailed. Thus, it is seen that the action of the management in not promoting the concerned workman in Technical Grade-A (Supervisory) with effect from the date S/Shri N. C. Banerjee and U.N. Singh were promoted in Technical Grade-A 1980 is justified.

10. Shri S. Bose, Secretary of the sponsoring union has represented the concerned workman and the sponsoring union in this case. He has submitted that the concerned workman has reportedly retired from service and so the present reference has become infructuous by efflux of time.

11. Accordingly, the following award is rendered—the management of M/s. B.C.C. Ltd., Loyabad Colliery is justified in not giving promotion to Shri T. D. Ghose in Technical Grade 'A' (Supervisor) with effect from the date from which S/Shri N. C. Banerjee and U. N. Singh were promoted in Technical Grade 'A' in 1980.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer.

[No. L-20012/114/84-D.III(A)/IR(Coal-I)]

K. J. DYVA PRASAD, Desk Officer

नई दिल्ली, 16 मई, 1989

का.अ.० 1327.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 1) के धारा 17 के अनुसूचन में, केन्द्रीय सरकार व बेस्टर्न कोलफील्ड्स लिमिटेड का सोहागपुर ऐरिया के प्रबंधन के संबंध में निदेशों द्वारा उक्त कर्मचारियों के बीच, संबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार का 5-5-89 को प्राप्त हुआ था।

New Delhi, the 16th May, 1989

S.O. 1327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sohagpur Area of M/s. W. C. Ltd. and their workmen, which was received by the Central Government on the 5-5-1989.

ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JABALPUR (M.P.)

CASE NO. CGIT[LC(R)(38)/1985.

PARTIES :

Employers in relation to the management of Sohagpur Area of Western Coalfields Ltd. P.O. Dhanpuri, Distt. Shahdol (M.P.) and their workman Shri Mohd. Yusuf, Works Supervisor, Regional Workshop, Burhar, represented through the M.P. Koyla Mazdoor Sabha, P.O. Dhanpuri, Distt. Shahdol (M.P.).

APPEARANCES :

For Workman—Shri D. L. Agurwal.

For Management—Shri P. S. Nair, Advocate.

INDUSTRY : Coal Mining—DISTRICT : Shahdol (M.P.).

AWARD

Dated the 25th April, 1989.

This is a reference made by the Central Government in the Ministry of Labour vide Notification No. L-22012 (152)/83-D.II(B)/DV, dated 18th May, 1985 for adjudication of the following dispute :—

"Whether the penalty of Rs. 17,600 and stoppage of two increments without cumulative effect imposed on the workman Shri Mohd. Yusuf, Works Supervisor Regional Workshop, Burhar by the management of Western Coalfields Limited, Sohagpur Area for not transporting Steel at the rate of Rs. 175 per Metric Tonnes from the M/s. Bombay M.P. Roadways, Nagpur is justified? If not, to what relief the workman concerned is entitled?"

2. It is common grounds that Shri Mohd. Yusuf (herein-after referred to as the workman) was working as Works Supervisor, R.W.S. Burhar in the relevant year of 1980. He was issued a show cause notice dated 24-12-1981 by the Deputy Chief Mining Engineer (E&M) Sohagpur on the following imputation of charges :—

Charges

"While you were on duty during the month of July 1980 the 190 tons of Steel was to be transported from Hindustan Steel Limited Stock Yard, Nagpur to Central Stores, WCL, Burhar and for this purpose, you were deputed in the month of July 1980 to go to Nagpur and to arrange for the transportation. Before going to Nagpur, a letter from M/s. Bombay MP Roadways dt. 9-7-1980 was received by GM, Sohagpur Area, wherein the firm quoted the rate of Rs. 175 per ton. This rate was brought to your notice and in token of having seen this, you signed in the reverse of the said letter of the firm. Thereafter, you visited Nagpur and obtained 4 quotations from the following firms as mentioned below :—

- (1) Bombay Raipur Roadways @ Rs. 268 per ton.
- (2) New Haryana Transport Co. @ Rs. 275 per ton.
- (3) M.P. Roadways @ Rs. 275 per ton.
- (4) Dalbir Roadways @ Rs. 300 per ton.

You were not authorised to call for above quotations when the specific letter from Bombay MP Roadways dated 9-7-80 was given to you wherein the firm quoted the rate of Rs. 175 per ton, but you have obtained above 4 quotations whose rate is very high and you placed the order to M/s. Bombay Raipur Roadways @ Rs. 268 per ton which is much higher than the rate of M/s. Bombay MP Roadways. Accordingly 190 MT of Steel was transported from Nagpur to Burhar on 14-8-80 in 10 Trucks.

Thereafter a letter was received from Bombay MP Transport on 24-8-80 to GM, Sohagpur wherein they stated that your representative (Shri Mohd. Yusuf) who was deputed for the job of Nagpur, did not visit there again. They (Bombay MP Roadways) have also mentioned that they offered the transportation @ Rs. 175 per ton.

Thus, you manipulated to obtain inflated rate of transportation from Transporters, Bombay Raipur Roadways and thus, you caused the loss to WCL appx. to the extent of Rs. 17,670 for which, you are wholly and solely responsible.

If the above charges are proved, they would constitute misconduct within the meaning of Company's certified Standing Orders under Clause 17(i)(a) which reads as :—

"Theft, fraud or dishonesty in connection with Company's business or property."

The workman replied to the show cause notice vide Annexure B on 28-12-1981.

3. The matter was, however, handed over to the Chief Vigilance Officer who conducted the enquiry into the matter and submitted his confidential report. Workman was charge-sheeted as above and one Shri M. S. Chandrashekher, Senior Personnel Officer, Burhar Group, was appointed Enquiry Officer vide order dated 22/23-1-1982 and the Chief Vigilance Officer, Jabalpur was appointed as Presenting Officer. The Enquiry Officer conducted the enquiry and submitted his report, it appear first to the Chief of Vigilance Coal Estate Officer who vide letter dated 31-12-82 observed as under :—

"After examining the Enquiry Report and Enquiry proceedings, it has been decided to impose the following penalty on Shri Mohd. Yusuf, Sr. Works Supervisor, RWS, Burhar :—

- (a) Recovery of monetary loss incurred by WCL to the tune of Rs. 17670 from Shri Yusuf.
- (b) Stoppage of 2 increments without cumulative effect.
- (c) Transfer of Shri Yusuf from the present place of posting to an insensitive post.

He has, therefore, requested the General Manager, Sohagpur Area to initiate further necessary action to impose the above mentioned penalties with intimation to him. Thereafter someone for Supdt. Engineer (F&M) Regional Workshop Burhar passed the following order imposing the penalties proposed by the Chief Vigilance Officer :—

- "1. Recovery of monetary loss incurred by WCL to the tune of Rs. 17670 from you.
2. Stoppage of 2 increments without cumulative effect."

4. Aggrieved by this punishment workman moved in conciliation and after failure of conciliation this matter was referred to this Tribunal for adjudication.

5. This Tribunal vide its order dated 18th November, 1986 decided the preliminary Issue No. 1 and held that the domestic enquiry was not legal and proper, as such gave the parties an opportunity to prove misconduct before this Tribunal. Parties therefore adduced evidence before this Tribunal.

6. The workman challenged the findings of Enquiry Officer as well as the Disciplinary Authority on legal grounds as

well as on facts, Workman inter alia also challenged the punishment order on the following grounds:—

1. That the order communicated to the applicant on behalf of the Superintendent Engineer (E&M) of Regional Workshop appears that he has passed the order as advised by the Chief Vigilance Officer without applying his mind to the findings of Enquiry Officer or to the punishment itself.
2. The order of punishment is not signed by the competent authority as per Standing Orders of the Colliery.
3. The Deputy Chief Engineer (E&M) which issued the charge-sheet and Supdg. Engineer who is purported to have issued the punishment order have no locus standi in the disciplinary matters as per the Certified Standing Orders of the Colliery as they did not come within the purview of Manager, Owner or Agent. Thus the charge-sheet and punishment order are both incompetent and without jurisdiction.

4. The case of the management further is that a letter was issued on 24th August, 1980 to Bombay M.P. Roadways by the General Manager, That Shri Mohd. Yusuf did not visit their Transport Company to obtain tender inspite of the fact that they had offered transportation charges therefore the case was registered by Special Police, C.B.I. as Case No. 25/80. The C.B.I. enquired into the matter and came to the following conclusion:—

"I therefore recommend R.D.A. for major penalty against Sri Mohd. Yusuf under order No. 17(1)(a) of the Standing Orders."

The above report of the C.B.I. was forwarded to the General Manager, WCL, Sohagpur by the Chief Vigilance Officer WCL, Nagpur with a request to take suitable disciplinary action against Mohd. Yusuf. Accordingly the workman was charge-sheeted vide charge-sheet dated 24th December, 1981 and Shri M. S. Chandrashekhar, Senior Personnel Officer was appointed Enquiry Officer. Enquiry was conducted from 16th March, 1982 to 11th May, 1982. Enquiry Officer examined seven witnesses for management and one defence witness and gave findings that the charges are proved. After the receipt of the findings of the Enquiry Officer an order of punishment dated 10th January, 1983 was issued. However, in their written statement dated 6th November, 1986 and rejoinder dated 4th March, 1986 management did not specifically plead or allege that who was the competent disciplinary authority as per Standing Orders. This Tribunal had framed the following issues and decided Issue No. 1 as preliminary issue against the management. My findings with reasons on the remaining issues are as under:—

ISSUES

1. Whether the enquiry is proper and legal ?
(Decided on 18-11-1986)
2. If not, whether the penalty awarded to workman is justified on facts of the case ?
3. Whether the punishment awarded is proper and legal ?
4. Relief and costs ?

Findings on Issue Nos. 2, 3 & 4.—It is convenient to decide the remaining Issue Nos. 2, 3 & 4 together. I therefore first proceed to examine the evidence adduced by the parties before this Tribunal. The burden was on the management to prove the misconduct. I will therefore first examine the evidence adduced by the management. In support of their case management examined Sekh Mukhtar, Manager of M/s. Bombay M.P. Roadways, Nagpur (M.W. 1), Nirmal Ghosh, Asstt. Stores Keeper (Central Stores) Burhar Sub-Area (M.W. 2), Narain Morya, Accountant of Burhar Group on Affidavit and relied on Ex. M/1 to Ex. M/43. They were cross-examined on their Affidavit.

8. In fact, except for the statement of Sekh Mukhtar remaining witnesses of the management except for certain admissions made by the witnesses in favour of the workman are

not material. Therefore I need not burden the record with the details of their evidence.

9. Statement of Sekh Mukhtar is that he had sent the quotation Ex. M/35 on behalf of his company on the direction of his owner, Shri Virendra Pal Singh. He had received letter Ex. M/36 from Senior Personnel Officer, Sohagpur Area, and letter Ex. M/37 was sent to the General Manager, Sohagpur Area. Letter dated 4th August, 1980 (Ex. M/38) is signed by him. I will therefore examine this documentary evidence. Ex. M/35 is the letter dated 9th July, 1980 giving quotation @ Rs. 175 per ton. Ex. M/37 dated 24th August, 1980 is the complaint saying that their representative Mr. Yusuf never visited their office for obtaining the quotation.

1. On the other hand, the statement of workman Shri Mohd. Yusuf (W.W. 2) is that he was assigned on 2nd August, 1980 the duty to collect the steel for the colliery. He was given the authority letter and his signatures were attested by the Senior Purchase Officer on the same. Workman further stated that before he left for Nagpur Mr. Karan Area Purchase Officer had orally told him that some letter of M/s. Bombay M.P. Roadways had been received by the General Manager in which transport company had quoted the rate of 175 per ton. Therefore he must obtain the quotation from that Company but the steel should be got transported from the Company who gives the lowest quotation. He therefore obtained the quotation Ex. M/38 to Ex. M/41, Ex. M/38 is the quotation of M/s. Bombay M.P. Roadways @ Rs 175 per metric tonne. The quotation Ex. M/40 of Bombay Raipur Roadways being the lowest he got the steel transported through that Transport Company. He has further stated that on return he had written to Mr. Karan that M/s. Bombay M. P. Roadways is not reliable and good company and it is black listed as is shown in Ex. W/1. He has further stated that Ex. M/1 is not the copy of his authority letter which was given to him as is apparent from the fact that it does not bear signature of the Attesting Officer, viz., Senior Purchase Officer in portion marked A to A. He has also stated on oath that letter Ex. M/35 dated 9th July, 1980 alleged to be of M/s. Bombay M.P. Roadways was not shown to him at the time he had gone to Nagpur. His plea is that if he was shown this letter there should have been his acknowledgement on it which is conspicuously absent from it.

11. In this regard, one of the plea of the management was that in fact workman was sent to take the quotation and he was not authorised to get the steel transported but this is believed by the very letter Ex. M/1 dated 2nd August, 1980, perhaps it appears to be a copy of the letter written to Shri B. K. Sharma, Purchase Officer of WCL, Nagpur by the Senior Purchase Officer, Sohagpur Area which clearly says "we are deputed our representative Shri Mohd. Yusuf to arrange collection and despatch of Iron and Steel materials allocated for Sohagpur Area. His specimen signature is attested below."

12. Even the charge says that "you were deputed in the month of July 1980 to go to Nagpur and arrange for transportation. None of the witnesses for the management supported this allegation. Therefore it is not proved that he was not authorised to get the steel transported and he was only deputed to get the tenders only from M/s. Bombay M.P. Roadways.

13. Next I will take up the other allegation made and held to have been proved by the Enquiry Officer and Disciplinary Authority. Next allegation is that before going to Nagpur a letter from M/s. Bombay M.P. Roadways dated 9th July, 1980 was received by the General Manager, Sohagpur Area wherein the firm had quoted the rate Rs. 175 per ton. "This rate was brought to your notice and in token of having firm". This charge is sought to be proved by the statement of seen this you signed on the reverse of the said letter of the Shri Narain Morya (W.W. 3). His statement in cross-examination is that from the statement Ex. W/1 portion marked B to B "I meant to say that the endorsement made on the reverse of the letter dated 2nd August, 1980 was made when I had handed over the same to Senior Purchase Officer. I do not recollect to reference in portion marked B to B regarding the letter Ex. M/1 I have no intimation or knowledge of letter dated 9th July, 1970 of M/s. Bombay M.P. Roadways Ex. M/35". He has further admitted that "if we had the letter Ex. M/35 we would have stopped the payment and

referred the matter to higher authority for clarification". In his examination-in-chief there is nothing to suggest to the contrary. Therefore his statement does not prove that the endorsement on the reverse of Ex. M/1 was made within the knowledge of the workman before he left for Nagpur. It is true that the workman has honestly admitted in his statement on oath that though he was informed about such a letter but he was not shown the same, otherwise he would have signed it in token of having received the information. It is true that the portion concerned does not bear his signature in token of having received the information. No other material witnesses examined during enquiry have been examined before this Tribunal. Some of those material witnesses like R. K. Lamba, Senior Clerk, Karan, Area Purchase Officer who is specifically alleged to have given the information to the workman are not examined before this Tribunal. Therefore their non-examination raises an adverse inference that if they had been examined they would not have supported the management. Thus for want of any reliable evidence on the point it is not proved that the said rates were brought to the notice of the workman and in token of having seen this the workman had signed on the reverse of the said letter of the firm. It is not disputed that the workman had visited Nagpur and obtained four quotations though as per rule only three quotations were required as has been stated by Shri Narain Moriya who had passed the bill submitted by the workman, but the allegations in the charge-sheet against the workman are that he was not authorised to call for above quotations when specific letter from Bombay M.P. Roadways dated 9th July, 1980 was given to him wherein the firm had quoted the rate of Rs. 175 per tonne. But the workman placed orders for higher quotation of Bombay Raipur Roadways at Rs. 268 per tonne which were more than that of Bombay M.P. Roadways. I have already come to the conclusion that the said letter of the firm quoting the rate of Rs. 175 per tonne was not shown to the workman but he was orally informed by Shri Karan, Purchase Officer which fact is honestly admitted by the workman. But his plea is that he took the quotation of Bombay M.P. Roadways Transport but since he gave higher rate of Rs. 275 per tonne he took three more quotations and awarded the contract to the lowest i.e. Bombay Raipur Roadways whose rates were the lowest @ Rs. 268 per tonne. This is what the workman had pleaded and stated on oath before this Tribunal. This was also his plea right from the very beginning.

14. In order to rebut this defence of the workman, the management has examined Shri Sekh Mukhtar (M.W. 1) the Manager of Bombay M.P. Roadways, Nagpur. His plea in para No. 4 of his Affidavit is that letter dated 4th August, 1980 (Ex. M/30) was signed by him but he had not written its contents because he had signed the Blank letter head and gave to Shri Namdeo of New Haryana Transport Company. Besides this, he did not explain in what circumstances and why he gave a signed blank quotation form to Shri Namdeo of New Haryana Transport Company. The workman has examined Shri Namdeo (W.W. 1) of New Haryana Transport Company on oath before this Tribunal. His statement on oath is that it is not true that Shri Sekh Mukhtar had given him Ex. M/38 a blank letter head only bearing his signatures. In his cross-examination he stated that he does not know Mohd. Yusuf, therefore it is not true that he had collected Ex. M/38 and given it to Sekh Mukhtar. He denied on oath that he had typed the contents of Ex. M/38 himself. No material is brought out in his cross-examination to discredit his testimony. On the other hand, Shri Sekh Mukhtar (M.W. 1) stated that though he had given the blank letter head but he had not brought this fact to the notice of his owner at that time. He has also admitted that the Blank letter head Ex. M/38 was not given to him either by the owner or the Manager of New Haryana Transport Company. Thus there is oath against oath. I will, therefore, examine the circumstances to see as to which of the statement are true.

15. Firstly as I have already stated Shri Sekh Mukhtar has not explained in what circumstances and why he gave Ex. M/38, the blank signed letter head, to a servant of another Transport Company, that too without permission or knowledge of his owner. Secondly, this conduct of his not only throws light on the character of Shri Sekh Mukhtar but also the dealing of his Company. Thirdly in order to save his skin now he can speak anything in order to justify his unauthorised act. Fourthly the conduct of Shri Sekh Mukhtar and even the Company to whom he represented is also of doubtful. Though in Ex. M/35 dated 9-7-1980 he

had quoted the rate of Rs. 175 per tonne which finds reference in the letter of Senior Purchase Officer, Sohagpur Area written to Bombay M.P. Roadways on 17th July, 1980 nearly a week after this incident and nearly a month after the workman had obtained the quotations on 4th August, 1980. In his letter Ex. M/36 dated 17th July, 1980 the Purchase Officer of Sohagpur Area had written this relevant portion to the said Bombay M.P. Roadways "In this connection we refer to your quotation No. nil dated 3rd June, 1980 to our representative Shri Mohd. Yusuf, wherein you have offered Rs. 271 per metric tonne. It is not understood how within a span of one month the transportation charges can vary to such an extent i.e. approximately Rs. 100 per tonne. The letter went on to say that the work of transportation will be awarded to you if the rate is found to be competitive. This not only explains the dubious nature of work of the Bombay M.P. Roadways Co. but it also supports the act of the workman why he distrusted this Company which is also borne out though from subsequent events that Maharashtra Housing and Area Development Authority had black listed M.P. Bombay Roadways vide their letter dated 25th November, 1981 (Ex. W/1).

16. This is not all, there is still further material against this Company. In its very complaint letter dated 24th August, 1980 (Ex. M/37) written by some Sekh Mukhtar to General Manager, Sohagpur Area to say that Mr. Yusuf had never visited the office to obtain quotation. Even in this letter the quotations are lowered from even Rs. 175 per tonne to Rs. 170 per tonne. This shows that how this Company can change its stand from time to time in order to suit its convenience and obtain quotation at any costs. This also shows that perhaps because Mr. Yusuf did not cooperate in his underhand design he wanted to see him punished any how.

17. For the reasons aforesaid, I am of the view that Shri Sekh Mukhtar (M.W. 1) and the Company to whom he represents is unworthy of credence and no reliance ought to have been placed on them or their complaint. Thus, to my mind, learned Enquiry Officer erred in accepting his testimony compared to the evidence led by the workman. In the circumstances, it is also not proved that the workman manipulated to obtain inflated rates and caused the loss to the Company and committed breach of Cl. 17(i)(a) of the Standing Orders. Thus the findings of the Enquiry Officer and the disciplinary Authority are perverse and as such are vitiated.

18. Lastly initiation of domestic enquiry and the order of punishment awarded has been challenged as being without jurisdiction. The plea of the workman is that Deputy Chief Engineer (E&M) who issued the charge-sheet and the Senior Engineer (E&M) who is purported to have issued the orders not being Manager/Owner/Agent on the management were not competent to issue the charge-sheet and the punishment order. Therefore they are bad in fact and a law and without jurisdiction. Clause (d) & (j) of Section 2 of the Certified Standing Orders of National Coal Development Corporation of India which are also applicable to the mines situated in the State of Madhya Pradesh respectively defines the Manager and Competent Authority. It is not the case of the management that it was the Manager who had issued the punishment order. The Competent authority has been defined Officer who is specifically nominated by the Managing Director by an order in writing and such orders are affixed to the Notice Board. In spite of the objection on the ground of competency the management has neither specifically pleaded nor denied the pleadings of the workman nor adduced an iota of evidence to prove that the person who initiated and passed the orders of punishment was a competent authority. While on the other hand workman on oath has stated that he was working under the administrative control of Sub-Area Manager who was the competent authority for appointment and dismissal. This evidence has not been rebutted. The orders regarding the competent authority are bound to be in possession of the management but they failed to produce the same. Therefore an adverse inference has to be drawn against them. It is thus not proved that the order of punishment was passed by the competent authority.

19. However, even for the sake of arguments I hold that the enquiry was initiated and order of punishment was passed by the competent authority but the order of punishment as already referred to above was passed on the advice of the Chief Vigilance Officer. Thus it goes to show that the order was passed without application of mind on the advice of

others. As such the order stands vitiated on this ground alone. I therefore hold that the order of punishment awarded is neither legal nor proper nor it is justified on the facts of the case. I decide these issues accordingly.

20. As a normal rule in such circumstances workman is entitled to the relief claimed by him. There are no circumstances in the case to the contrary to show that the workman is disentitled to get the reliefs claimed by him. In the circumstances I answer the reference as under:—

That the penalty of Rs. 17,600 and stoppage of two increments without cumulative effect imposed on the workman Shri Mohd. Yusuf, Works Supervisor, Regional Workshop, Burhar by the management of Western Coalfields Limited, Sahagpur Area for not transporting Steel at the rate of Rs. 175 per Metric Tonnes from the M/s. Bombay M.P. Roadways, Nagpur is not justified being illegal and improper. He is entitled to the refund of amount of Rs. 17,600 if so effected or the refund of amount already deducted from any source and the two increments from the date they have been stopp'd. He is further entitled to Rs. 200 as costs from the management.

V. S. YADAV, Presiding Officer

[No. 22012/152/83-D. III(B)/D.V-IR(C-II)]

का० प्रा० 1328.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व वेस्टर्न कोलफील्ड लि०, देकुण्डपुर गेरिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-89 को प्राप्त हुआ था।

S.O. 1328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Baikunthpur Area of M/s. W.C. Ltd. and their workmen, which was received by the Central Government on 5-5-89.

ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(69)/1984

PARTIES :

Employers in relation to the management of Baikunthpur Area of W.C. Ltd. District Surguja (M.P.) and their workman, Shri Guru Bux Singh Mullick, Overman, V.T.I. Post Office Bistrampur Colliery, District Surguja (M.P.).

APPEARANCES :

For workman—Shri N. L. Pandey.

For management—Shri P. S. Nair, Advocate.

INDUSTRY : Coal Mines DISTRICT : Surguja (M.P.)

AWARD

Dated : April 25, 1989

This is a reference made by the Ministry of Labour vide its Notification No. L-22012(140)/83-D.III (B)/D.V dated 5th September, 1984 for adjudication of the following dispute—

“Whether the action of the management in dismissing Shri Guru Bux Singh Mullick, Overman V.T.I. with effect from 21-7-1982 without charge-sheet, enquiry etc. by the General Manager of Baikunthpur Area of W.C.L. District Surguja is justified? If not, to what relief the workman is entitled?”

2. Parties filed their pleadings, documents etc. on which the following issues were framed:—

1. Whether the management is entitled to lead evidence to prove misconduct before this Tribunal?
2. Whether the action of the management in dismissing Shri Guru Bux Singh, Overman, V.T.I. with effect from 21-7-82 without charge-sheet, enquiry etc. by the General Manager of Baikunthpur Area of W.C.L. District Surguja is justified? If not, to what relief the workman is entitled?
3. Whether the Overman is a workman for the purpose of I.D. Act?
4. Relief and costs.

3. I have heard the parties on Issue Nos. 1, 2 & 3 and have decided the issues in favour of workman by my order dated November 20, 1987 which will form part of this award. I have already stated briefly the facts of the case in my above order dated 20th November, 1987, therefore I need not repeat it again.

4. It is relevant to reproduce para 9, 11 and 12 of my order dated 20th November, 1987 which are—

“9. For the reasons discussed above I hold that though the action of the management in terminating the services of the workman without charge-sheet and enquiry etc. is not justified but the subject matter of relief will depend on the evidence adduced by the parties before this Tribunal. I hold and decide Issue No. 1 and 2 accordingly.”

“11. In view of my finding above I hold that the management is entitled to lead evidence to prove misconduct before this Tribunal and the workman is entitled to lead evidence in rebuttal.”

“12. Parties are therefore directed to file relevant documents on which they proposed to rely in support of their case on 18-12-1987. Thereafter the case will be fixed for evidence of parties.”

5. Management though requested on 18-12-1987 to file documents they did not do so till 5-2-1988. Therefore on 5-2-1988 the case was fixed for evidence of parties. Management examined three witnesses Shri Kishan Bhople, Driver (M.W.1), Shri G. C. Chanda, Superintendent of Mines at Bhatgaon Colliery (M.W.2) and Shri D. P. Choudhary, General Manager, Baikunthpur Area consisting of Charcha, Ka'kona, Bistrampur and Bhatgaon Collieries at the relevant time. All the above witnesses were cross-examined by the workman. On the other hand, workman examined himself as W.W.1 and Shri Surya Bhan Singh (W.W.2) who was working as Mining Sirdar in Bhatgaon Colliery from 1978. Therefore now I proceed to examine the statements of the witnesses and documentary evidence on record as to what relief the workman will be entitled to if any as I have already held in my order dated 20th November, 1987 that the action of the management in terminating the services of the workman without charge-sheet and enquiry etc. is not justified. In view of the above order I allowed the parties to lead evidence to prove misconduct before this Tribunal.

6. I will first examine the statements of management's witnesses. Shri Kishan Bhople (M.W.1) was working as Driver in Baikunthpur Area from August 1978 to December, 1983. He has stated that he was on duty on 18-7-1982, the date of incident. In his examination-in-chief he has stated that seven persons including Shri Guru Bux Singh were standing to talk to the General Manager. They surrounded Shri D. P. Choudhary to talk to him. Shri Choudhary told them that as he has to return back to his office and if matter is urgent they should come to his office. When Shri Kishan Bhople started the jeep one man caught him and Sirdarji pulled the stopper of the jeep. He has further stated that there were hot exchange of words but nothing more transpired with the General Manager. In his cross-examination he has admitted Shri Guru Bux Singh talks very loudly and is always stick

to his demands. Therefore the officers were annoyed with him. Further at the time of this incident Gurbax Singh had prayed to G.M. that poor worker has been dismissed so at least he should listen to him. Besides this Guru Bux Singh said nothing.

7. Next witness is Shri G. C. Chanda (M.W. 2) who was Supdt. of Mines at Bhatgaon Colliery on the date of incident i.e. on 18-7-1982. He has stated that when Shri Choudhary was to go by Jeep Shri Mallick entered and switched off the started jeep and assaulted Mr. Choudhary by pulling his Collar. He then tried to drag out Mr. Choudhary and forced him to talk to him. In his cross-examination he has admitted that at the relevant time his confidential was supposed to be written by Shri D. P. Choudhary.

8. Next witness is the main witness Shri D. P. Choudhary the then General Manager who has been alleged to have been assaulted by Shri Mallick, the workman concerned. He has stated that on 18-7-82 I reached Bhatgaon Colliery in my jeep at about 6.30 P.M. for routine inspection of the colliery. At about 7 p.m. when I was discussing official matter with Shri Chanda, Supdt. of Mines Shri Mallick entered his office. Shri Mallick was in infuriated mood and he wanted that certain matters relating to Mining Sirdars and Overman of Bhatgaon Colliery should be then and there discussed." Further he has stated that "at about 8.00 p.m. when I was coming out of office road and set down in the jeep and the Driver started the jeep Shri Mallick rushed towards jeep, entered into the front seat of the jeep and pulled the choke of the jeep due to which the jeep came to a stop. He then switched off the ignition and forcibly took away the key of the jeep and kept it with him. Then he kept hold my Collar and tried to drag me out of jeep and threatened to kill me unless and until I discuss all the issues with him and take decision then and there."

9. These are only three witnesses examined by the management and I find that the evidence on material point is discrepant. Shri G. C. Chanda in his statement stated that when Mallick came to his office he said to Shri D. P. Choudhary that he will see how he refused to talk. But Shri D. P. Choudhary, complainant, himself did not support him on this point. His version is that he told him that he first hold the discussion with Shri Chanda and later he may come to Baikunthpur for discussion with him if necessary. He then left. This belies the story of giving threat in the office. Shri G. C. Chanda and Shri D. P. Choudhary both have stated that Shri Mallick assaulted Shri Choudhary by pulling his Collar and tried to drag him out but according to Shri Kishan Bhole, the driver who was sitting inside the Jeep admitted that it was Suryabhan Ji who pulled him out from the Jeep. Sirdarji (Mallick) only told the General Manager that you have come a big man so he cannot talk but he has to listen others and there was only hot exchange of words. Nothing more transpired with the General Manager. Thus this witness does not support the story of pulling the Collar of Shri D. P. Choudhary and attempt to drag him out from the Jeep by Shri Mallick. This allegation is made against Shri Suryabhan who was also a co-accused in the criminal case with the workman, Shri Mallick, as is apparent from EX.W/7.

10. The story of the workman on the other hand is that he was the Deputy Zonal Secretary of the INMOSSA a registered trade union. On 17-7-1982 he had received the intimation from the Secretary of the Association that one Shri Kumar Kaushlan had been terminated by the management on improper ground and he was not allowed to go for his Gaona (bringing his wife for the first time from his parent place). Shri D. K. Roy, Colliery Manager, had also intimidated the executives of the Union to attend the meeting with the Superintendent of Mines, Shri Chanda on 18-7-1982 at 5 p.m. vide Ex. W/6. He reached the office of the S.O.M. at about 6.30. During the course of discussion regarding Kumar Kaushlan Shri Chanda said that he is not the appointing authority and since the General Manager is coming they may wait and talk to him in this regard. Therefore when Shri Choudhary came they went and appealed to him to discuss the matter of Kaushlan. But he told them that there he is on tour, they may come to Headquarters but on their pleading he permitted them to talk over the matter and he

accepted the request to post him to his previous place of posting. Therefore they had disbursed. Other witness examined is Suryabhan Singh. His version is that he was also prosecuted in this case by the police but in fact the story of the management is false. On perusal of both sides evidence and documents I find that the report Ex. M/1 and Ex. M/6 also go to show that the story has been exaggerated from time to time, by the subordinate of Shri Choudhary who was General Manager and made into a serious affairs so as to make out a case of termination without even an enquiry and without following the force of natural justice as the summary dismissal order Ex. M/8 which was approved by Shri D. P. Choudhary on 19-7-1982 goes to show.

11. On the other hand, workman and his witness has also tried to completely minimise his role to save their skin. The true story appears to be that when Shri D. P. Choudhary refused to talk over the matter which the Union though him important they almost gheraoed his Jeep and pulled out the ignition key to stop him from going and there were hot exchange of words perhaps from both sides. So ultimately Shri Choudhary had to re-enter the office and discuss the matters. But because Shri D. P. Choudhary felt humiliation he took very strong step and got Shri Mallick dismissed without even a formal enquiry and also went to the extent of prosecuting him but he was acquitted and given benefit to doubt in criminal case later on.

12. No doubt Union has a right to press demands but it does not authorise the Union workers to take the law in their own hands. A striking balance is to be maintained. Strike or Gherao may be an excuse as legitimate act but to pull out the keys of the Jeep and compel an officer to get down and then discuss the matter then and there, to my mind, amounts to high handedness and erratic behaviour. In a similar case of which the facts are narrated below the Hon'ble Supreme Court in the case of Rama Kant Misra Vs State of U.P. and others (1982 Lab. I.C. 1790 SC) observed that the extreme penalty of dismissal is not justified. The relevant para is as under :—

"Shri Rama Kant was charged for misconduct under clauses 20 (9) 18 and 28 of the Standing Orders for disorderly behaviour or conduct likely to cause a breach of peace threatening an employee within the premises and conduct prejudicial to good order and discipline".

2. The specific allegation is that on November 18, 1971, around 2.50 p.m. appellant was complaining about the deduction that was being made from his wages for his absence from the place of work and late attendance with Shri Mahendra Singh. When Shri Mahendra Singh replied that he had no separate rules for him, the appellant is alleged to have lost his balance. The threatening language alleged to have been used by the appellant when freely translated reads :

"Are other persons your father. I will make you forget your high handedness either here or somewhere else. An Officer of yesterday's making discloses power consciousness."

The Hon'ble Supreme Court laid down that "these words indicate that even though misconduct is proved and a penalty has to be imposed, the extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case meaning thereby that the punishment was either disproportionately heavy or excessive. It is well recognised principle of jurisprudence which permits penalty to be imposed for misconduct that the penalty must be commensurate with the gravity of the offence charged."

13. From the above I am of the opinion that looking to the facts and circumstances of the case it will meet the test of justice if the workman is not awarded back wages which will to my mind will be a sufficient punishment.

14. As a last resort on behalf of the workman it has been contended that he was acquitted in the criminal case and therefore he be reinstated from the date of termination i.e.

21-7-1982 and further he be awarded back wages with compensation. I am unable to agree, firstly the workman was acquitted for want of evidence and was given benefit of doubt. Secondly the judgement of the criminal court was passed much before the services of the workman were terminated. Therefore the acquittal does not entitle him to full back wages or compensation. I decide the Issue No. 4 accordingly and answer the reference as under :—

That the action of the management in dismissing Shri Guru Bux Singh Mallick, Overman V.T.I. with effect from 21-7-1982 without charge-sheet, enquiry and even on merit by the General Manager of Baikunthpur Area of W.C.L., District Surguja is not justified. The workman is, therefore, entitled to be reinstated with effect from 21-7-1982 with continuity of service but without any back wages till the date of this award. No order as to costs.

V. S. YADAV, Presiding Officer.

ANNEXURE

PART OF AWARD IN CASE NO. CGIT/LC(R)(69)/1984.
BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JABALPUR (M.P.)

CASE NO. CGIT/LC(R) (69)/1984.

PARTIES :

Employers in relation to the management of Baikunthpur Area of W.C. Ltd. District Surguja (M.P.) and their workman Shri Guru Bux Singh Overman, V.T.I. Post Office Birsampur Colliery, District Surguja (M.P.).

APPEARANCES :

For workman : Shri N. L. Pandey.

For management : Shri P. S. Nair, Advocate.

INDUSTRY : Coal Mines DISTRICT : Surguja (M.P.)

ORDER

Dated November 20, 1987.

The Central Government in the Ministry of Labour vide its Notification No. L-22012(140)/83-D. III (B) D. V. dated 5th September, 1984 referred the following dispute, for adjudication :—

"Whether the action of the management in dismissing Shri Guru Bux Singh Mallick, Overman V.T.I. with effect from 21-7-1982 without charge-sheet, enquiry etc. by the General Manager of Baikunthpur Area of W.C.L. District Surguja is justified? If not, to what relief the workman is entitled?"

2. The facts material for the decision of the above dispute are that the workman was working as Overman and was charge-sheeted for misconducted by the management. The management on the complaint of Shri D. P. Chowdhary, General Manager, W.C.L., Baikunthpur Area without holding a domestic enquiry terminated the services of the workman vide order dated 18/21-7-1982 which reads as under:—

"On 18-7-1982 at about 7.30 P.M. you Shri G. S. Mallick forcibly entered into the Jeep No CPL-9294, assaulted Sir D. P. Chowdhary, General Manager, W.C.L. Baikunthpur Area who was sitting in the jeep, switched off the vehicle, took out the key and forcibly dragged him out of the jeep and compelled him to go the office of the Suptt. (Mines) Bhatgaon Colliery and abused him in filthy language all along. The above misconducts committed by you are considered to be of very grave nature and constitute serious misconduct under the So. No. 17

(i)(r) of the Certified Standing Orders under which your service is governed. The misconduct committed by you is so grave that dismissed from the services is the only befitting punishment and as such I hereby order for your dismissal from the services of the Company with immediate effect."

3. The case of the management is that since Shri Mallick was holding the post of Overman which is supervisory in nature and was drawing more than Rs. 1600/- per month he is not a workman within the definition of Sec. 2(s) of the Industrial Disputes Act, 1947. The management further submitted that on facts and circumstances of the case, departmental enquiry was not necessary. However, management prays for an opportunity to prove the misconduct before this Tribunal.

4. The case of the workman is that he was appointed as General Mazdoor on 1-1-1975 under the Mining Establishment and was promoted as Shot Firer, Mining Sirdar and Overman respectively on 16-5-1976, 18-8-1877 and 16-8-1980. He started taking active part in legitimate trade union activities and ultimately he became Dy. Zonal Secretary Indian National Mines Overman, Sirdars and Shot Firers Association. In the capacity of Dy. Zonal Secretary he used to take up the grievances of the workmen. On the intimation of the Colliery Manager he met on 18-7-1982 Shri D. P. Chowdhary, the then General Manager to get the case of the alleged wrongful removal of Shri Kumar Kaushlendra settled amicably. It is further contended by him that the management was fully aware of the provisions of the Standing Orders which have the force of a statute and the management intentionally and wilfully avoided to follow the procedure laid down under the Standing Order No. 17(ii) and arbitrarily, illegally and unlawfully dismissed him with effect from 21-7-1982 only with the mala fide intention and malicious attitude of taking revenge against the applicant for his legitimate and lawful trade union activities and also with an ulterior moto of breaking the solidarity of the workmen with terror. No order or punishment under Standing Order No. 17 (i) shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the allegations made against him. The workman has further contended that the management managed to get F.I.R. Lodged with the police against four persons by some officers other than the person alleged to have been assaulted and a criminal case at Surnipar in the Court of Judge Magistrate, Class I was initiated and the applicant was exonerated honourably. Therefore the applicant is entitled to be reinstated to his former post of Overman V.T.I. with full back wages as he was dismissed from service unlawfully, illegally and unjustifiably.

5. Admittedly there was no enquiry. Therefore I framed the following issues which with my reasons and findings are as under :—

ISSUES.

1. Whether the management is entitled to lead evidence to prove misconduct before this Tribunal?
2. Whether the action of the management in dismissing Shri Guru Bux Singh, Overman, V.T.I. with effect from 21-7-1982 without charge-sheet, enquiry etc. by the General Manager of Baikunthpur Area of W.C.L. Distt. Surguja is justified? If not, to what relief the workman is entitled?
3. Whether the Overman is a workman for the purpose of I. D. Act.
4. Relief and costs.

Findings :—

6. Issue No. 1, 2 : The contention of the management is that as laid down in AIR 1973 SC 1227 Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. Vs. Management that since no enquiry was held by the management even then they are entitled to lead evidence before this Tribunal to prove misconduct. On the other hand, the contention of the workman is that in view of the Standing Orders and the definition of retrenchment given in Sec. 200 of the I. D. Act termination without domestic enquiry would

amount to retrenchment and as such the workman is entitled to be reinstated with full back wages. The second limb of the contention of the workman is that the Tribunal cannot go beyond the scope and ambit of the reference made by the Central Government.

7. In this connection, my attention has been drawn to the wordings of the reference which no doubt says whether the action of the management in dismissing without charge-sheet, enquiry etc. is justified? Admittedly the management held no domestic enquiry against the workman. Therefore if the contention of the workman is correct then naturally this Tribunal is bound to hold that it is not justified. But there is second limb of the reference as well i.e. if not to what relief the workman is entitled? At this stage I would like to cite the relevant verdict of the Supreme Court given in the case of Workman of Firestone Tyre Co. (P) Ltd. (Supra) to the following effect :—

"From the proviso it is not certainly possible to come to the conclusion that when once it is held that enquiry has not been held or is found to be defective, an order reinstating the workman will have to be made by the Tribunal. Nor does it follow that the Proviso deprives an employer of his right to adduce evidence for the first time before the Tribunal."

From the above it is crystal clear that Hon'ble Supreme Court has laid down the law asking the Tribunal that in cases where no domestic enquiry has been held or where it has been held and is found to be defective the management is entitled to prove misconduct before the Tribunal. This direction has therefore to be followed.

8. Coming to the second contention of the workman that this Tribunal cannot travel beyond the scope and ambit of the reference made by the Central Government there could hardly be any dispute over this contention. But I am of the opinion that as far as the justification of the action taken by the management is concerned it is a separate issue to the relief claimed by the workman. This Tribunal can hold the action unjustified but at the same time direct and relief subject to the evidence being taken regarding the relief.

9. For the reasons discussed above I hold that though the action of the management in terminating the services of the workman without charge-sheet and enquiry etc. is not justified but the subject matter of relief will depend on the evidence adduced by the parties before this Tribunal. I hold and decide Issue No. 1 and 2 accordingly.

10. Issue No. 3 :—This issue shall not detain me long since it is now well settled that the Overman is a workman within the meaning of Sec. 2(s) of the I. D. Act. This point has already been decided by my learned predecessor, Shri A. G. Qureshi (now Hon'ble High Court Judge M.P.) in case No. CGIT/LC(C)(154)/1980 in the following words :—

"The Majumdar Award had considered the respective contentions of the Unions and the different managements in respect of the classification of the Overman and after considering the nature of duties the Majumdar Award in para 563 of the Award has held that the Overman and Mining Sirdar are also skilled manual workers. According to the Majumdar Award although the duties of the overman are supervisory in nature but they are not purely supervisory and the manual part of the duties is so considerable that whatever the supervision an overman does, is necessarily subordinated to the manual work."

The aforesaid award has not been superseded or modified by any subsequent award. Therefore, in view of the Majumdar Award I hold that the applicants are workmen."

I therefore full agree with the above decision and hold accordingly.

11. In view of my finding above, I hold that the management is entitled to lead evidence to prove misconduct before this Tribunal and the workmen is entitled to lead evidence in rebuttal.

12. Parties are therefore directed to file relevant documents on which they proposed to rely in support of their case on 18-12-1987. Thereafter the case will be fixed for evidence of parties.

V. S. YADAV, Presiding Officer.

[No. I-22012/140/83-D. III-B/D.V./IR(C-II)]

R. K. GUPTA, Desk Officer.

नई दिल्ली, 17 मई, 1989

का.स. आ.स. 1329.—प्रौद्योगिक विवाद प्रतिनिधित्व, 1947 (1947 वा 11) का प्रा. 17 के अनुसरण में, केन्द्रीय सरकार कार्पास स्टेट बैंक के प्रबंधक के संबंध में निरोधों और उनके कर्मचारियों में बीच, अनुसंधान में निरिक्त औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के संवाद को प्रकाशित करती है जो केन्द्रीय सरकार को 8 मई, 1989 को प्राप्त हुआ था।

New Delhi, 17th May, 1989

S.O. 1329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial disputes between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 8th May, 1989.

ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR(M.P.)

Case No. CGIT/LC(R)30/1987

PARTIES :

Employers in relation to the management of State Bank of India, Regional Office, Marhatal, Jabalpur and their workmen S/Shri Vinod Kumar Choukse Village Jogidhana, P.O. Nigri, Teh. Bergi, Jabalpur and Shri Nirmal Kumar Patel, C/o Shri Khare, 500 Beoharbagh, Jabalpur (M.P.).

APPEARANCES :

For Workmen S/Shri R. K. Gupta, Advocate and D. P. Tiwari.

For Management Shri B. G. Garg.

INDUSTRY : Banking DISTRICT Jabalpur (M.P.)

AWARD

Dated 24-4-1989

By Notification, No. I-12012/343/86-D.II(A) dated 3rd April, 1987 the following disputes in respect of Shri Vinod Kumar Choukse and Shri Nirmal Kumar Patel has been referred by the Central Government to this Tribunal, for adjudication :—

(1) Whether action of the management of State Bank of India in terminating the services of Shri Vinod Kumar Choukse w.e.f. 1-1-86 and not considering him for further employment while recruiting fresh hands under Sec. 25H of the I.D. Act is justified? If not, to what relief the workman is entitled?"

- (2) Whether the action of the management of State Bank of India in terminating the services of Shri Nirmal Kumar Patel w.e.f. 2-2-86 is justified? If not, to what relief the workman is entitled?

2. The common ground in the case of Shri Vinod Kumar Chouksey is that Shri Chouksey was employed in various capacity at different Branches of the State Bank of India i.e. Tula Ram Chowk Branch, Ranchi Branch and G.C.F. Branch respectively as Badli Watchman, Waterman and Messenger for a very short period i.e. 57 days 7 days and 16 days respectively from 29-10-1984 to 11-1-85, 11-3-1985 to 1-4-85 and 16-12-1985 to 31-12-1985. His services were terminated by the G.C.F. Branch with effect from 1-1-86.

3. The common grounds in respect of Shri Nirmal Kumar Patel are that Shri Patel was in employment of the State Bank of India at Kamla Nehru Nagar Branch, Jabalpur with effect from 18-9-1984 to 1-2-1986, but according to the management in between the above period he also worked as Canteen Boy from 17-12-1984 to 31-8-1985 and for the rest of the period he worked as Messenger.

4. It is also a common ground of the parties that the workmen concerned were not given appointment or termination orders in writing. They were not given proper notice or pay in lieu of notice or any retrenchment compensation.

5. The case of Shri Vinod Kumar Chouksey further is that he was stopped from working from 1-1-86 by engaging a stranger in his place for attending the same work which the workman was doing. He was cleaning the counters and furnitures, serving drinking water to the staff and customers, carrying books, registers, distributing the dak etc. These work are of a permanent nature. No disciplinary or other departmental action was contemplated or taken against him. His discontinuance of service is arbitrary, unjust and illegal as the management has violated the provisions of the Sastry Award and the I.D. Act, 1947. Therefore he is entitled to be reinstated with full back wages.

6. The case of the management further regarding Shri Chouksey is that the applicant's employment at a particular branch cannot be tagged with the employment at the other branch for the purposes of continuous employment. The Branch Manager of a Branch has authority to employ on daily wages and he is the sole employer. The Branch Manager at different Branch is another employer in relation to the same workman if he engages him subsequently. The applicant did not even complete 240 days during the preceding year and therefore he is not entitled to protection under the I.D. Act. He could not have been engaged on a permanent basis as he had not completed even 90 days of continuous employment at one place at one stretch and therefore he was not considered for continuous employment. He was a daily rated employee and could be terminated in terms of the contract. After all for jobs requiring full-time work someone or the other has to be kept in a business concern. He was not employed for full time. There is no illegality involved in the action taken by the management against him. He is not entitled to any relief.

7. The case of the workman, Shri Nirmal Kumar Patel, further is that he was attending to the work of cleaning Bank's furniture, preparing and serving tea to the staff, fetching and serving drinking water to the members of staff and public. He was also distributing Bank's dak, carrying books, ledgers, registers and vouchers etc. These work are of a permanent nature. When he was stopped from work another person named Bhagirath Prasad Sahu was engaged for attending to the same work which he was performing. For accommodating new persons his services were discontinued without complying with the mandatory directions of the Sastry Award as well as the I.D. Act. Therefore his termination of service is arbitrary, unjust and violative of the provisions of law. He is therefore entitled to the benefits of continuous service, reinstatement with full back wages, leave, medical aid uniforms and liveries etc. as are permissible to Sub-staff of the Bank.

8. The case of the management further is that the applicant, Nirmal Kumar, was appointed on daily wages basis by the Branch Manager at Kamla Nehru Nagar Branch on 18-9-1984 initially at Rs. 10 per day as messenger. He worked as under :—

- | | |
|--|-----------|
| 1. From 18-9-1984 to 15-12-84
as Messenger. | 89 days |
| 2. From 17-12-1984 to 31-8-85
as Canteen Boy in Staff
Welfare Canteen and was
paid Rs. 150 per month. | |
| 3. From 2-9-1985 to 1-2-1986
as Messenger (including
holidays). | 147 days. |

He did not turn up at the Branch to work from 3-2-1986. Thus of his own, he left the job and was not terminated. The management has further contended that it is true that the applicant was performing duties of messenger so long as he was in the employment of the Bank but it is specifically denied that he was engaged permanently. Since the applicant did not report for duty on 3-2-1986 as usual, another person Bhagirath Sahu was engaged as messenger for day-to-day work on daily wages who worked from 3-2-86 to 29-9-86. Then one Rajesh Kumar was engaged and he worked from 1-10-1986 to 13-10-1986. After Rajesh Kumar one A. K. Shukla worked from 14-10-1986 to 7-1-87, Raj Kishore Upadhyay worked from 21-1-87 to 11-2-87 and Rajendra Prasad Mitra worked from 12-2-86 to 15-3-1986. The management has further contended that for day to day work the Branch Managers are authorised to engage persons on daily wages. For regular employment even as Messenger, a selection has to be held by a selection body duly constituted in accordance with the procedure of the Bank. No regular employment could be provided by the Branch Managers. The management has therefore not violated any mandatory provisions of the Sastry Award or Industrial Disputes Act. Workman is therefore not entitled to any relief.

9. The management has also contended that one Shri D. P. Tiwari who has filed the statement of claim on behalf of the workmen is an unauthorised person. The individual can only file the statement of claim. The reference has been made by the Ministry of Labour under Sec. 10(1)(d) (2A) of the I.D. Act. The statement of claim is also signed by the individual workman concerned. Shri D. P. Tiwari therefore can very well represent the individual workman being an employee of the Bank. The objection of the management is therefore over ruled.

10. Now I take up the case of Vinod Kumar Chouksey. Admittedly Shri Chouksey had worked in different Branches of the Bank i.e. Tula Ram Chowk, Ranchi and G.C.F. for 57 days, 17 days and 16 days respectively and he was engaged by different Branch Managers. Therefore the question for determination is whether the applicant will be deemed to have worked for one employer in view of the fact that the Branches of the Bank in which he worked were under the management and the control of the State Bank of India. In this connection, on behalf of the Bank my attention has been drawn on judgments delivered by this Tribunal in Case No. CGIT/LC/IR(41)/86 decided by me and another judgment by my learned predecessor Justice Shri K. K. Dube in Case No. CGIT/LC/IR(36)/83 in which it has been laid down that the workman cannot be said to be under the same employer when he worked in two different branches. The recruitments in the Bank is governed by certain set of rules. Appointment on temporary nature are contemplated in para 20.7 of the Sastry Award but in the instant case he would not come in the category of appointment contemplated in the Sastry Award. The power given to appoint for such a workman was given to the Manager or the Officer-in-Charge of the Branch. Therefore when the workman employed by one branch he cannot be said to be the servant of the other branch.

11. In the instant case it is pertinent to note that the applicant had not worked continuously from one Branch to the other. The applicant has himself stated in the pleading that he was initially employed as Sub-staff at Tularam Chowk Branch, Jabalpur from 29-10-84 to 11-1-85, in Ranchi Branch

from 11-3-85 to 29-3-85 and G.C.F. Branch from 16-12-1985 to 31-12-1985. Thus it is crystal clear that he was employed at the above mentioned branches for temporary period at a particular tenure. As the Branch Managers were different at these place the employers were different each time. Neither there was one employer nor was the employment continued. As such the period of employment at one Branch cannot be clubbed with that of other Branches where he was subsequently employed. As such the provisions of Sastry Award or Section 25F of the I.D. Act do not apply.

10. It is contended by Shi Chouksey that he was stopped from working from 1-1-1986 and in his place a stranger engaged for attending the same work which he was doing. In this connection he gave his evidence before this Tribunal and stated that after his termination Shri Nil Kanth, Triath Prasad and Rajendra Patel were respectively employed. Except the bold statement of the applicant there is nothing on record to support the plea of the applicant that in his place some stranger/persons named above were employed after he was stopped from work on 1-1-1986. Thus it is not proved that the management has contravened Sec. 25H of the I.D. Act. Consequently I hold that the action of the management of State Bank of India in terminating the services of Shri Vinod Kumar Chouksey with effect from 1-1-86 is justified as it is not proved that the management has violated the provisions of Sastry Award or Industrial Disputes Act, particularly Sec. 25H of the I.D. Act.

11. Now I take up the case of the workman, Shri Nirmal Kumar Patel. Besides the pleading narrated above the workman, Shri Patel, has filed an affidavit in support of his case and he was cross-examined by the management. In his examination-in-chief on affidavit he has stated that he worked in the State Bank of India, Kamla Nehru Nagar Branch, from 18-9-84 to 1-2-1986 continuously. He was attending to his duties daily at about 9.15 a.m. When he asked for his monthly pay for the month of December, 1984 (payable in January 1985) Shri Dixit told him to receive Rs. 150 p.m. and if the same is not acceptable to him, he is at liberty to leave the service and Shri Dixit further told that as per direction of the Regional Manager-1, Jabalpur Shri Narendra Kumar Yadav is to be paid the salary of permanent Messenger from January 1985. As such he was not paid his full salary and the workman was compelled to do the work on Rs. 150 per month. After the transfer of Shri Dixit Shri B. P. Soni joined as Branch Manager. When he approached Shri Soni, the Branch Manager, who told him that some other officer is pressurising Shri Soni to give employment to one Bhagirath Prasad. On 3-2-1986 he went to the Bank as usual, but Shri Soni told him to bring a letter from the Regional Manager, but the Regional Manager also told the workman that since applicant was not employed by him therefore nothing will be given in writing. Again when he went to Branch office Shri Soni told him that he has kept Shri Bhagirath and therefore he has not been given the work. In his cross-examination he has stated that he was selected by the Branch Manager, Shri Dixit, as Messenger. He is not aware of any recruitment rules of the Bank. He has admitted that he worked as a Canteen Boy from 16-1-1984 to 21-8-1985. On the other hand, management examined Shri Bhanu Prasad Soni (M.W. 1) an officer of Kamla Nehru Nagar Branch, Jabalpur. He stated that Nirmal Kumar Patel started working as Messenger from 2nd September, 1985 and worked there till 1st February, 1985. He was orally appointed by the Branch Manager as Temporary Messenger. He was not given any appointment order or any termination order. Since Patel himself stepped attending his duties he gave neither any notice nor pay in lieu of the notice or any retrenchment compensation. Learned representative of the workman has argued that the management has not followed the mandatory provisions i.e. paragraph 495 of the Sastry Award while engaging the workman as no written order has been issued to him. Para 495 of the Sastry Award reads as under:

"...We further direct that on a candidate's appointment as a temporary employee, a probationer or a permanent member of the staff, the Bank shall give him a written order specifying the kind of appointment and the pay and allowances to which he would be entitled and that such a written order shall be given on the appointment of a part-time employee also."

Admittedly no such appointment order while engaging the workman twice as Messenger was issued to him in writing, which is crystal clear that the management has not followed the provisions contained in Para 495 of the Sastry Award. It is further argued that after retrenchment of the workman fresh candidates have been appointed from time to time and the workman has not been offered work. The management have therefore violated Sec. 25-H of the I.D. Act. In this connection, workman Shri Patel besides his pleading he has stated on oath that he was not offered work from 3-2-1986 and in his place other persons were appointed. This fact has also been admitted by the management in para 5 of their pleading which is being reproduced below:

"It is denied that he was stopped from attending his duties effective from 2-2-86. Since the applicant did not report for duty on 3-2-86 as usual, another person Bhagirath Sahu was engaged as messenger for day-today work on daily wages. He worked from 3-2-1986 to 29-9-1986. He did not come. Then, one Rajesh Kumar was engaged and he worked from 1-10-1986 to 13-10-1986. On his leaving the job, one A. K. Shukla was engaged and he worked from 14-10-1986 to 7-1-1987. Thereafter, on his leaving the job, one Raj Kishore Upadhyaya worked from 21-1-1987 to 11-2-1987. In between Rajendra Prasad Mitra was engaged and he worked from 12-2-1986 to 15-3-1986."

There is not an iota of evidence that the workman was offered the work on 3-2-1986. On the other hand, workman has stated that he was running from pillar to post i.e. Branch Manager to Regional Manager but he was refused work on a flimsy ground that some other person has been engaged. To my mind, this is a clear violation of S. 25H of the I.D. Act.

12. Admittedly while engaging the workman no appointment order was issued. Likewise no termination order was issued. Neither notice nor pay in lieu of notice was offered or paid before the stoppage/termination of work to the workman, although admittedly the workman concerned served the Bank as Messenger for long period i.e. from 18-9-1984 to 1-2-1986 except from 17-12-1984 to 31-8-85 when he worked as Canteen Boy.

13. In the circumstances it is proved that after the termination of the workman a few persons were engaged in his place. If the work was there and after his termination it was necessary to appoint another man he should have been given a chance and provisions of I.D. Act should have been complied. The management should have maintained a register of such temporary workers and applied the principles of "last come first". As the management did not observe any of these provisions of the I.D. Act nor the provisions of the Sastry Award, the termination of the services of the workman after taking work from him for a long period was illegal, unjust and mala fide. I therefore answer the reference as under:—

1. That the action of the management of State Bank of India in terminating the services of Shri Vinod Kumar Chouksey w.e.f. 1-1-86 and not considering him for further employment while recruiting fresh hands under S. 25H of the I.D. Act is justified. He is not entitled to any relief.
- (2) That the action of the management of State Bank of India in terminating the services of Shri Nirmal Kumar Patel w.e.f. 2-2-1986 is illegal and unjustified. He is entitled to be reinstated from 2-2-1986 as Messenger and full back wages with continuity of service and consequential benefits. However, he will be entitled to minimum salary of newly appointed Messenger as back wages. No order as to costs.

V. S. YADAV, Presiding Officer

[No. L-12012/343/86-DII(A)]

नई दिल्ली, 25 मई, 1989

का० आ० 1330.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ बीकानेर एण्ड जयपुर के प्रबंधक के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राजस्थान, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17 मई, 1989 को प्राप्त हुआ था।

S.O. 1330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Rajasthan. Jaipur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workmen, which was received by the Central Government on the 17th May, 1989.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर कैम्प उदयपुर
प्रकरण क्रमांक सी आई टी 8/85

मध्य : सेक्रेटरी, राजस्थान बैंक एम्प्लॉयज यूनियन,
मार्फत बैंक आफ राजस्थान लिमिटेड,
अश्विनी बाजार उदयपुर (राजस्थान)

एवं

महाप्रबंधक,
स्टेट बैंक आफ बीकानेर एण्ड जयपुर
प्रधान कार्यालय तिलक मार्ग
जयपुर (राजस्थान)
रेफरेन्स अन्तर्गत धारा 10(1) (ग) औद्योगिक विवाद
अधिनियम, 1947

उपस्थित: श्री एस के भारद्वाज ला आफिसर स्टेट बैंक आफ
बीकानेर एण्ड जयपुर उपस्थित

श्री बी एस भण्डारी श्रमिक प्रार्थी स्वयं उपस्थित

अवार्ड

दिनांक 23 मार्च, 1989

भारत सरकार डेस्क अधिकारी ने उनके आदेश संख्या एल 12012/14/84-डी (अ) 11-ए के द्वारा निम्न विवाद इस न्यायाधिकरण को अन्तर्गत धारा 10(1)(ग) औद्योगिक विवाद अधिनियम, 1947 जिसे तत्पश्चात अधिनियम, लिखा जाएगा वास्ते अधिनितार्थ प्रस्तुत किया है।

विवाद

“क्या स्टेट बैंक आफ बीकानेर एण्ड जयपुर के प्रबंधक के श्री बी एस भण्डारी को 5-7-1981 से हैड क्लर्क के रूप में पदनामित न करने की कार्यवाही न्यायोचित है? यदि नहीं तो संबंधित कर्मकार किस अनुतोष का हकदार है?”

उक्त निर्देशन इस न्यायाधिकरण में दिनांक 7-2-85 को प्राप्त हुआ जिसे इस न्यायाधिकरण में पंजीकृत किया जाकर उभयपक्षकारान को नोटिस भेजे गये। राजस्थान बैंक एम्प्लॉयज यूनियन द्वारा बैंक आफ राजस्थान लिमिटेड, क्लार्क टावर उदयपुर की ओर से स्टेटमेंट आफ क्लेम श्री रणजीत जैन सचिव ने इस आशय का प्रस्तुत किया कि श्री भण्डारी का पद परिवर्तन दिनांक 4-7-78 के पत्र अनुसार हो गया था फिर भी स्थानीय शाखा व्यवस्थापक ने उन्हें अपने सहायक महा प्रबंधक को अपने पत्र संख्या 1856/ 20 मितम्बर 1978 को सहायक महा प्रबंधक को पत्र संख्या ए जी एम/2/34ए 1/15488 दिनांक 30-8-78 के संदर्भ को लेकर पत्र लिखा कि श्री एन एस राठोड़ जिनका पद परिवर्तन पूर्व में किया जा चुका है ऐसी स्थिति में उसे श्री भण्डारी का पद परिवर्तन

कर सूचित करावे ऐसी परिस्थिति एक हास्यस्पद थी जब कि वे स्वयं भी उनके उपरोक्त पत्र से भी यह स्वीकार कर रहे हैं कि श्री भण्डारी का पद परिवर्तन हो चुका है। यह कि दिनांक 4-7-78 के तहत जब बैंक ने श्री भण्डारी का पद परिवर्तन कर दिया और बैंक नियमानुसार उन्हें आगे के कार्यकारी पद पर कार्य के भत्ते हेतु तीन वर्ष के लिये प्रतिबंधित भी कर दिया और जिसकी अग्रिम 3-7-81 को समाप्त हो जाती है।

आगे यह आरोप लगाया कि श्री भण्डारी को उनकी वरिष्ठता के तहत दिनांक 21-9-77 को ही डेलर का कार्य दिया जा चुका है तो उन्हें पूर्व पद परिवर्तन की आवश्यकता नहीं थी। अंत में यह प्रार्थना की कि श्री भण्डारी को दिनांक 5-7-81 से हैड क्लर्क के पद पर पदोन्नति एवं नियुक्त किया जावे।

उक्त स्टेट क्लेम को बैंक की ओर से प्रतिवाद निम्न आधार पर किया गया जिसमें ऐतराज लिया गया कि प्रार्थी श्री भण्डारी का स्टेटमेंट आफ क्लेम तथ्यों एवं विधि के अनुसार चलने योग्य नहीं है उसे सरसरीतौर पर खारिज किया जावे। प्रार्थी श्री भण्डारी बैंक से कोई राशि प्राप्त करने का अधिकारी नहीं है। अब चूंकि पक्षकारान के मध्य समझौता हो गया है इसलिए बैंक की ओर से पेश किया गया उत्तरक्लेम विस्तीर्णतौर पर पुनः यहां लिखा जाना आवश्यक नहीं है।

आज जब कि यह पत्रावली प्रार्थना पत्र के जवाब और सुनवाई के लिये नीयत की गई थी। पक्षकारान की ओर से उदयपुर कैम्प पर समझौता पेश किया। बैंक की ओर से श्री एस के भारद्वाज ला आफिसर ने अपना अधिकार पत्र पेश किया जिस पर प्रार्थी श्रमिक श्री बी एस भण्डारी ने कोई ऐतराज न होना जाहिर किया। श्री बी एस भण्डारी स्वयं उपस्थित आया। श्री एस के भारद्वाज वरिष्ठ अधिकारी बैंक व श्री बी एस भण्डारी ने सचिव, राजस्थान बैंक एम्प्लॉयज यूनियन द्वारा दी बैंक आफ राजस्थान लिमिटेड, क्लार्क टावर, उदयपुर की ओर से समझौता पेश किया। और जाहिए किया कि यह समझौता स्टेट बैंक आफ बीकानेर एण्ड जयपुर के अधिकृत अधिकारी एवं यूनियन के सचिव के मध्य स्वेच्छा से हुआ है। समझौता को पढ़कर सुनाया व समझाया गया श्री बी एस भण्डारी ने यह स्वीकार किया कि यह समझौता बिना किसी डर, भय, लालच या दबाव के सम्मन हुआ है उसे व्यक्तिगत रूप से यह मान्य है और यूनियन ने यह समझौता भी स्वेच्छा से बैंक के साथ किया है। चूंकि समझौता रेफरेन्स की परिधि में है और यूनियन ने बैंक के साथ अपनी इच्छा से किया है ऐसी सूरत में समझौता को तत्स्वीक किया जाता है। यह समझौता अवार्ड का अंग रहेगा।

अवार्ड

समझौता के आधार पर अवार्ड यूनियन के पक्ष में निम्न प्रकार से पारित किया जाता है--

6. यह कि प्रार्थी बैंक ने यह स्वीकार कर लिया है कि श्री भेर सिंह भण्डारी को उदयपुर में हैड क्लर्क पद के लिये नियुक्ति पत्र इस समझौता के लागू होने की तिथि से दे दिया जावेगा।

2. यह कि श्री भेर सिंह भण्डारी पुत्र श्री के एम भण्डारी जाति हिन्दू निवासी उदयपुर को इस संबंध में पिछला भत्ता एवं बेतन अन्य कोई भी संभावित लाभ प्राप्त करने का अधिकारी नहीं होवेगा तथा ना ही इस संबंध में वह भविष्य में कोई विवाद उठावेगा तथा सचिव श्री रणजीत लाल जैन भी इस सौहार्दपूर्ण समझौते से पूर्णतया सहमत है।

उक्त पंचाट की प्रतिलिपि केन्द्रीय सरकार को वास्ते प्रकाशनायक नियमानुसार भेजी जावे।

पंचाट आज दिनांक 23-3-89 को कैम्प उदयपुर पर जारी किया गया।

प्रताप सिंह आदव, पीठासीन, अधिकारी

[सं० एन-12012/14/84-डी I (ए), डी० III (ए)]

का० आ० 1331 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ पाटियाला के प्रबंधन के संबंध नियोजकों और उनके कमकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16 मई, 1989 को प्राप्त हुआ था।

S.O. 1331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Patiala and their workmen, which was received by the Central Government on the 16th May, 1989.

ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No. I. D. 43/86.

PARTIES :

Employers in relation to the management of State Bank of Patiala.

AND

Their workman : Ram Parkash.

APPEARANCES :

For the workman : Shri T. C. Sharma.

For the management : Shri P. S. Arora.

INDUSTRY : Banking

STATE : Punjab

AWARD

Dated : 20th April, 1989

On a dispute raised by Ram Parkash against State Bank of Patiala, Central Govt. had vide No. L-12012/285/85-D. II(A) dated 16th June, 1986 referred the following dispute to this Tribunal :

"Whether the action of the management of State Bank of Patiala in refusing promotion as officer in junior management grade scale I to Shri Ram Parkash, Head Cashier Jalal Branch is justified when no consent was obtained from him with reference to Bank Memo No. Per19/1984 dated 25-6-1984 ? If not, to what relief is the workman entitled and from what date ?"

1. Case of the petitioner as set out in the statement of claim is that he has been working as Head Cashier category E and presently posted at Moonak Branch of the Bank. It is mentioned that management has been offering chances of promotion to the workman staff in the clerical and cash department including the Head Cashiers as officer Scale-I (Junior management Scale) on the basis of written test and interview as per promotion policy based upon joint discussions/agreements. It is pleaded that management had denied the opportunity to the present petitioner inspite of repeated representations made to the authorities.

In its answer filed management took plea that under the promotion policy laid down by the Bank only those employees are called for written test/interview who give their unconditional consent for promotion in response to the memos issued by the Bank. On merits it is pleaded that in the year 1984 the consent of employees eligible for promotion were invited by the Bank vide Memo No. Per19/1984 dated 25-6-1984 and the petitioner who was then posted at Banks Jalal Branch and was eligible, had not given his consent and rendered himself as non-contender. It is mentioned that workman who had put in 37 years service in the Bank is fully aware about the system/procedure of living consent

and refusal for promotion in as much as he had earlier availed 4 chances of promotion under group 'A' by giving written consent in the year 1968, 1969, 1970 and 1972. It is stated further that in the year 1985 the petitioner did give his consent letter for appearing in interview for promotion in response to Bank Memo No. Per19/1984 dated 18th January, 1985 but in view of imposition of penalty on him reducing his basic pay from 1660 to 1470 per month for the irregularity committed by him, he was in eligible for promotion and as such was not called for interview for promotion under Group 'D' as per rules.

2. Both the parties were afforded opportunity to lead evidence and they availed the same. Shri Ram Parkash workman produced affidavit Ex. W1 reiterating allegations made in the statement of claim. He has solemnly affirmed that though the management had issued circular No. Per19/1984 dated 25-6-84 to the branches for promotion but it did not offer him any chance of promotion and in this respect he had submitted representation dated 25-8-1984 to the Branch Manager Jalal which was forwarded to Zonal Office vide despatch No. 514 dated 1-9-1984. He has deposed that promotion offer deliberately was not given to him as the management was not well disposed to wards him. He tendered copy Ex. W2 of letter dated 29-8-1984 sent by him to Regional Office Bhatinda asking as to why he has not been called for interview in 'D' Grade.

In rebuttal the management tendered affidavit Ex. M1 of S. C. Mittal the then Branch Manager Jalal Branch. He has solemnly affirmed that on receipt of circular No. Per19/1984 dated 25-6-1984 at Jalal Branch, he had shown the same to Ram Parkash petitioner and got its receipt acknowledged from Ram Parkash on the circular itself. He deposed further that Ram Parkash did not give his consent or refusal within stipulated date i.e. 15-7-1984. During his cross-examination he admitted that the circular on which acknowledgement of Ram Parkash was obtained must be in the Jalal Branch of the Bank.

Admittedly in the year 1984 the workman who was then posted at Jalal Branch of the Bank was eligible for being considered for promotion. Case of the management is that workman rendered himself as non-contender by not giving his consent for promotion. Workman contends that he was never offered any chance to give his consent. Evidence on the file shows that on 29-8-1984 workman had sent a representation to the Regional Manager asking for reasons as to why he has not been called for the interview. The sole question rests on the controversy as to whether the circular No. Per19/1984 dated 25-6-1984 issued by the Head Office asking the branches to obtain and forward the consent/refusal letter from the eligible employees to head office not later than 15-7-1984 for considering for promotion as officer in junior management grade scale I in group 'D' was circulated to Ram Parkash or not ? The then Branch manager Shri S. C. Mittal appearing for the management has testified that he had obtained signatures of Ram Parkash on the copy of the circular received in the branch in token of its acknowledgement. The said document containing signatures of Ram Parkash acknowledging receipt of the circular is admittedly lying with the Jalal Branch of the Bank where Ram Parkash is no more posted. This is the only piece of document by the management it can be well presumed that give his consent. The said circular allegedly containing signatures of Ram Parkash in token of its acknowledging was the best piece of evidence to clinch the issue and the same has been withheld by the Bank management for the reasons best known to it. In view of the non-production of the said document by the management it can be well presumed that no consent was obtained from Ram Parkash with reference to Bank memo No. Per19/1984 dated 25-6-1984. Act of the management of State Bank of Patiala in refusing to consider Ram Parkash for promotion as officer in junior management grade Scale I in the year 1984 when Ram Parkash did not suffer from any ground of ineligibility is not justified. The petitioner was within its right to be considered for the said promotion w.e.f. the date when eligible employees were considered and promoted. Reference is, therefore, returned with the findings that action of the management of State Bank of Patiala in refusing to consider Ram Parkash Head Cashier Jalal Branch for promotion as officer in junior management grade scale I in the year 1984

was not justified and management shall consider him for promotion on the basis of Bank's Memo No. Per/19/1984 dated 25-6-1984 and in case of his promotion he shall be entitled to all benefits of higher pay scale, dearness allowance and other allowance etc. from the date person junior to him had been promoted to officer in junior management grade scale 1 group 'D' in the year 1984. Chandigarh.

M. S. NAGRA, Presiding Officer
[No. L-12012/285/D. II(A)/D. III(A)]

नई दिल्ली, 26 मई, 1989

आ० अ० 1332 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, स्टेट बैंक आफ सौराष्ट्र के प्रबंधन के सदस्य नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अति-करण, जयपुर के पंचाट की प्रमाणित करने है, जो केन्द्रीय सरकार को 17 मई, 1989 को प्राप्त हुआ था।

New Delhi, the 26th May, 1989

S.O. 1332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Industrial Tribunal, Jaipur as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of Saurashtra and their workmen, which was received by the Central Government on the 17th May, 1989.

परिशिष्ट

औद्योगिक न्यायाधिकरण, जयपुर

माननीय न्यायाधीश श्री प्रताप मिश्र यादव, आर.एच.जे.एम.
केस नं. सीआईटी. 44/88

मध्य

श्री आर.के.जीन, मकान नं. 4347 नाथमन जी का चौक, अनाज
मंडी जौहरी बाजार, जयपुर।

एवं

प्रबन्धक स्टेट बैंक आफ सौराष्ट्र, राजसमिदा भिनेगा के
घाम, अनाज मंडी, जौहरी बाजार, जयपुर।

रैकॉर्ड अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम,
1947

उपस्थिति

प्राथी की ओर से: कोई उपस्थित नहीं है।
अप्राथी की ओर से: श्री ए.सी. उपाध्याय
दिनांक अवाह: 14-3-89
अवाह:

भारत सरकार के श्रम मंत्रालय के डैस्क अधिकारियों ने उनकी अधि-
सूचना सं. एन. 12012/647/87/डी/2(ए) दिनांक 14-7-88 निम्न
विवाद अंतर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम 1947
जिसे तत्पश्चात् अधिनियम का जयेंगा रूप न्यायाधिकरण को वास्ते अधि-
निर्णय करने हेतु प्रस्तुत किया है—

“क्या स्टेट बैंक आफ सौराष्ट्र जयपुर के प्रबंधनत्व की श्री आर.के.
जीन को सेवायें समाप्त करने तथा नई भर्ती करने समय औद्योगिक
विवाद अधिनियम की धारा 25-अ के अधीन उसके नियोजन पर

विचार न करने की कार्यवाही समाप्तित है? यदि नहीं तो संशोधन
अभियोग किस अनुसंधान का हकदार है।”

2 उपरोक्त निर्देशक इस न्यायाधिकरण में दिनांक 20 मार्च, 88
को प्राप्त होने पर उसे पंजीकृत किया गया और उसी पक्ष कार्य
को नॉटिस जारी करने के आदेश दिये गये। आगामी नॉटिस पेश दिनांक
21-9-88 को कोई पक्षकार उपस्थित न होने के कारण उन्हें नॉटिस जारी
करने का आदेश दिया गया और नॉटिस इस न्यायाधिकरण में जारी भी
किया गया। तत्पश्चात् आगामी नॉटिस पेश दिनांक 24-11-88 को
प्राथी की ओर से कोई उपस्थित नहीं आया न ही प्राथी अधिक स्वयं
उपस्थित आया। विपक्षी नियोजक संगठन के अधिवक्ता श्री ए.के.
उपाध्याय उपस्थित आये। तत्पश्चात् दिनांक 3-1-89 के लिए नॉटिस
धरती गई उनके पत्रावृत्त भी प्राप्त किया नॉटिस 14-3-89 को प्राथी
अधिक उपस्थित नहीं आया और अप्राथी बैंक को और भी
उनके अधिवक्ता श्री ए.सी. उपाध्याय उपस्थित आये
जिन्होंने एक प्रार्थनापत्र इस आशय का प्रस्तुत किया कि प्राथी श्री
आर.के. जीन प्रारम्भ में उपस्थित नहीं आ रहे हैं और उन्होंने अपना
क्लेम भी प्रस्तुत नहीं किया है। योग्य अधिवक्ता विपक्षी ने इस न्याया-
धिकरण का ध्यान इस ओर भी आकर्षित किया कि केन्द्रीय सरकार ने
जो रैकॉर्ड इस न्यायाधिकरण का भेजा गया है उसी में प्राथी राजकुमार
की भी यह निर्देश दिया गया था कि वह रैकॉर्ड की प्राप्ति के 15 दिनों
के अन्दर अधिकरण के समक्ष अपना क्लेम प्रवेक्षों सहित प्रस्तुत करेगा
और विपक्षी को क्लेम पेश करने का और दस्तावेजों की प्रतिलिपि भेजेगा।
इसलिए वह शायद था कि रैकॉर्ड की प्राप्ति के 15 दिनों के अन्दर
अपना स्टेटमेंट आफ क्लेम प्रस्तुत करे परन्तु अपने अपना क्लेम
पेश नहीं किया उनके अनिश्चित भी प्राथी को इस न्यायाधिकरण में नॉटिस
भेजे गये जब भी यह हाशिर नहीं आया। योग्य अधिवक्ता ने भी यह भी
जबानी बयान की कि हमें यह स्पष्ट है कि प्राथी स्टेटमेंट आफ क्लेम
पेश करने में रुचि नहीं रखता है इसलिए यह अनुमान निकाला जाये
कि पक्षकारों के मध्य कोई विवाद पैदा नहीं रह गया है। इस पर
पक्षधारी का अश्वस्तिकता किया निर्देशन (रैकॉर्ड) को पृष्ठ पर नंबर 2,
3 पर पंजीकृत टाक में प्राथी आर.के. जीन का मकान सं. 1347
नाथमन जी का चौक, अनाज मंडी जौहरी बाजार, जयपुर के पते पर
रैकॉर्ड की प्रतिलिपि भेजी जाना अधिकृत है और हमें यह भी निर्देश
दिया गया है कि औद्योगिक विवाद (केन्द्रीय) नियम 1957 के नियम
10(ख) के अधीन की गई व्यवस्था के अनुसार विवाद उठाने वाला पक्ष
को समाप्त दी जाती है कि दोनों का विवरण जो संगत दस्तावेजों सहित
पूरा हो, अवलम्बों (रिलायन्स) तथा गवाहों की सुची इस निर्देशन आवेदन
की प्राप्ति के 15 दिनों के अन्दर अधिकरण के पास दाखल करेगा। और
ऐसे विवरणों को एक प्रति इस विवाद में अन्तर्ग्रस्त प्रत्येक विपक्षी पक्षकार
को भी भेजेगा। इससे स्पष्ट है कि केन्द्रीय सरकार श्रम मंत्रालय के डैस्क
अधिकारियों ने ऐसे आदेश उन्हें दे दिये थे कि वे रैकॉर्ड की प्राप्ति के
15 दिनों के अन्दर अन्दर दस्तावेजों सहित अपना स्टेटमेंट आफ क्लेम
और गवाहों की सुची प्रस्तुत करेगा। मगर इस निर्देशन आदेश के बावजूद
भी प्राथी इस न्यायाधिकरण में अपने लम्बे समय तक उपस्थित नहीं
आया। अतिसाधन इस न्यायाधिकरण द्वारा भी प्राथी अधिक को स्टेटमेंट
आफ क्लेम प्रस्तुत करने के लिए नॉटिस दिया जो 27-10-88 को भिज
जाना प्रतीत होता है और उसके बावजूद भी प्राथी अधिक उपस्थित
नहीं आया और स्टेटमेंट आफ क्लेम प्रस्तुत नहीं किया। इस कदर अक्षर
दिये जाने के पश्चात् भी प्राथी श्री आर.के. जीन उपस्थित नहीं आया।
इससे ऐसा प्रतीत होता है कि वह इस रैकॉर्ड को चलाने में रुचि नहीं
रखता है या इस विवाद के संबंध में कोई विवाद पैदा नहीं रह गया है
अतः मौजूदा रैकॉर्ड के संबंध में कोई विवाद नहीं अवाह पारित किया
जाता है। पंचाट की प्रतिलिपि केन्द्रीय सरकार को अन्तर्गत धारा 17(1)
अधिनियम वास्ते प्रमाणनार्थ भेजी जाये।

प्रताप मिश्र यादव, न्यायाधीश
[सं. एन. 12012/647/87-डी-II/(ए)/डी-III(ए)]
पी०बी० श्री धरन, डैस्क अधिकारी

नई दिल्ली, 19 मई, 1989

का. आ. 1333 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तुंगभद्रा बोर्ड, बेल्लरी के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलोर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-5-89 प्राप्त हुआ था।

New Delhi, the 19th May, 1989

S.O. 1333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Tungabhadra Board, Bellary and their workmen, which was received by the Central Government on the 12-5-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT BANGALORE

Dated 27th April 1989

Central Reference No. 27/88

I PARTY

Shri Hussain Khan,
Shri Chennappa
Shri Jaffar & Shri Venkatesh
R/by the General Secretary
Thungabhadra Board Factory
Workers and Civil Employees
Union Thungabhadra Dam
P.O. Bellary Dist.
Karnataka State

II PARTY

Vs. The Secretary
Thungabhadra Board
T.B. Dam, Bellary Dist
Karnataka State.

APPEARANCES :

For the I Party Shri S. S. Malebennur,—Advocate.

For the II Party Shri A. K. Bat—Advocate.

AWARD

By exercising its powers under Section 10(1)(d) of the I.D. Act, the Government of India, Ministry of Labour made the present reference on the following point of dispute by order No. L-42011/35/87-D.II(B) dated 13-6-1988.

POINT OF REFERENCE

“Whether the action of the management of Tungabhadra Board T.B. Dam, Bellary Distt. in retrenching S/Shri Hussain Khan, Chennappa, Jaffar and Venkatesh, casual labourers is justified? If not, to what relief the workmen are entitled to?”

2. The I party Union has then filed its claim statement and inter alia, it is contended as follows.

The persons shown below, who were working in the II part have been stopped from work from the date shown below :

Sl. No.	Name	Date from which work started	Date which Stopped from work
(1)	Jaffar Sahab S/o Shaik Mahboob	Oct. 1985	1-12-86
(2)	Chennappa S/o Marianayagan	Apr. 1985	1-12-86
(3)	K. Venkatesh S/o Durgappa	Oct. 1985	1-12-86
(4)	Hussain Khan S/o Petha Syed Khan	June 1984	Nov. 1986

3. No notice or no retrenchment compensation was paid to them. In the memorandum of settlement arrived at on 7-3-1987 before the Assistant Labour Commissioner (Central), Bellary, there was an agreement that all the four should be admitted to work and ex-gratia equivalent to two months wages should be paid. It was also agreed that on or before 30-4-1987 a seniority list should be prepared, so that they should be absorbed. Apprehending retrenchment, an industrial dispute was raised. The Assistant Labour Commissioner issued notice to the parties and fixed a conciliation meeting on 13-4-1987. From 13-4-1987, these four workmen were again stopped from work, on the ground that the work for which they were engaged had been completed. The II party contended that they were casual workers. They contended that the following daily wagers who were appointed subsequent to them have been still continued in service.

	Date of Appointment	Where working
(1) Smt. Rani	1-10-1984	Garden Works, T.B. Dam.
(2) Smt. Somalamma	4-1-1985	-do-
(3) Sri Lal Bhadur	2-4-1985	-do-
(4) Smt. Varamahalaxmi	1-4-1985	Camp Works T.B. Dam.
(5) Sri Balasubramani	4-4-1985	Garden Works, T. B. Dam
(6) Sri Naca Bhadur	8-8-1985	Garden Section, T. B. Dam.
(7) Sri Lakshmanesingh	1-10-1985	-do-
(8) Sri Pram Bhadur	1-10-1985	-do-

The management has not followed the provisions of Section 25-F, 25-G etc. of the I.D. Act. They have been compelled to incur debts for their maintenance. Hence, it is prayed that an order may be passed for their reinstatement and consequential benefits.

4. The II party has filed its counter statement and inter alia, it is contended as follows.

The Tungabhadra Board was constituted by the President of India under section 66(4) of the Andhra Act of 1953. Its functions include maintenance of T.B. Reservoir, canal systems, horticulture and to carry on incidental functions. Its employees are drawn from the Government of Karnataka and Andhra Pradesh. The casual workers are employed depending upon the exigencies of the work in maintenance of canal, dam etc. The board is a limb of the Government. The functions of the board are the sovereign functions of the State. The persons engaged by the Board are Government servants, engaged for the performance of the sovereign functions of the State. The Government of India has made the matter clear in their memoranda as shown below.

1. D.W.I 46(6)(b) dated 28-11-1961 Ministry of Irrigation and Power (copy enclosed).

2. O.M. No. 16-1-1987 P.II dated 21-4-1987 of the Ministry of Water Resources (Copy enclosed).

The I party cannot maintain the dispute. They cannot be called as industrial workers. The reference made by the Government is not valid. There are different categories of persons working in the Board shown as below :

- (1) Regular establishment drawn from both the states,
- (2) Workcharged Establishment on monthly scales of pay,
- (3) Daily rated workers engaged for maintenance work and who are regularised in the vacancies arising in item No. 2.
- (4) Daily rated workers including Gurkha Watchman, engaged purely for casual work.

These four persons were unskilled casual workers. Their services were dispensed with with effect from 13-4-1987, after the work for which they were engaged was completed. They did not have any continuous service. However, as a special case it was agreed to pay some exgratia of two months pay and it was given on compassionate grounds. The Memorandum of Settlement dated 7-3-1987, in that connection makes the matter more clear. The persons employed on daily wages work on the canal of 250 kms. at different places. They are engaged by different officers and expenditure is debited to different heads. Their case has been already settled by the Settlement dated 7-3-1987. It is not correct to compare these persons with those employed on N.M.R. basis. Since the dispute was settled on 7-3-87, the matter may be treated as closed. No junior to them has been kept in service. The persons engaged on NMRs are from different categories and they were employed for different items of work as shown below.

1. Lal Bahadur	2-4-1985	{ Gurkha Watchmen engaged for night watch and ward.
2. Naca Bahadur	8-8-1985	
3. Lakshmana Singh	1-10-1985	
4. Pran Bahadur	1-10-1985	
5. Bala Subramani	4-4-1986	Skilled worker (Matriculate).
6. Varamahalakshmi	1-4-1985	No such worker.
7. Smt. Rani	1-10-84	{ or Woman Mazdoors
8. Smt. Somulamma	4-11-1985	

5. In view of the aforesaid pleadings a preliminary issue was raised as shown below :

“Whether the dispute is not an industrial dispute and that there is no proper reference and that it is not maintainable as contended in para 1 of the counter statement?”

6. It was taken up as a preliminary issue.

7. The parties submitted their written arguments on the same.

8. In my considered order dated 11-3-1989, it has been held that the reference is maintainable and that this Tribunal has the jurisdiction to entertain the same.

9. The matter was then called for hearing at Bellary camp on 21-4-1989.

10. On 21-4-1989, the II party and their advocate remained absent though waited for till 2.30 p.m. The I party was then called upon to adduce evidence. Five witnesses have been examined for the I party and Exs. W-1 to W-9 have been got marked.

11. The learned counsel for the I party has been heard.

12. My finding on the point of reference is as follows

It is not a case of retrenchment, but it is a case of non-compliance with the terms of the settlement, regarding which the I party workmen are entitled to the relief as shown below:

REASONS

13. In the claim statement, the workmen have contended that they had been working from June 1984 or October 1985 and that in November 1986 or from 1-12-1986 they have been stopped from work and that the action of the management amounted to retrenchment. WW-1 the Secretary of the I party union and all the four workmen viz., WW-2 to WW-5 have stated that they had put in more than 240 days of service in the period of 12 months next proceeding the date of stoppage of work. The statements given by the workmen to the Union at Exs. W-1 to W-4 support their statements. Exs. W-5 to W-8 are the representations given by the workmen to the Secretary of the Union.

14. Exs. W-1 to W-8, indeed support the evidence of WW-1 to WW-5. The question that arises for consideration is not whether it is a case of retrenchment, because the workmen have themselves admitted in the claim statement in 1377 G/89--5.

Para 4 that there was a settlement on 7-3-87. It is also an admitted fact that after 7-3-87, they had been given work and, in fact, they did work till 13-4-1987. The question therefore is whether the II party was justified in not abiding by the terms of settlement dated 7-3-1987, as per which it had undertaken to give them work. The failure report at Ex. W-9 shows that as per the case of the workmen, the Junior Engineer had asked them not to come for work, unless they change their name, but that the workmen refused to change their names and thus they have been stopped from work. Ex. W-9 further shows that discussions were also held on 13-4-87 and the matter continued till 5-5-87 and that the management had contended that these four casual workers had discontinued with effect from 13-4-1987 and not from 1-4-87, that the concerned matters had been settled by the settlement dated 7-3-1987 and therefore there was no dispute. From the failure report Ex. W-9, it is obvious that the management had absolutely no objection to abide by the terms and conditions of the settlement dated 7-3-87. Similarly, there is no dispute on the point that the II party has admitted to give them work under the settlement dated 7-3-19-87. Since, it is not a case of retrenchment, I find that the II party is bound by the settlement dated 7-3-87 and it shall have to provide work to the workmen. The workmen cannot claim any retrenchment compensation or any back wages, since they are also bound by the settlement dated 7-3-87. Except for the interested testimony of the workmen, there is no independent evidence to prove that in April 1987 the concerned junior engineer had asked them not to come for work unless they change their names. There is no convincing evidence produced by the workmen that the management had stopped them from work unless they changed their names. Under the aid of circumstances, I am of the view that it would suffice if an award is passed, directing the management to provide work to these four persons within one month from the date on which this award comes into force, as per the terms and conditions of the Settlement dated 7-3-1987.

15. In my view, the feelings and relations between the parties are likely to get strained, if any order for costs or any other order is passed. I, therefore, do not propose to pass any order in that connection.

16. In the result, an award is passed to the effect that it is not a case of retrenchment but that it is a case of non-compliance of the settlement dated 7-3-1987. The II party is hereby directed to provide work to all the four workmen named above within one month from the date on which this award comes into force.

(Dictated to the Stenographer, taken down by her, got typed and corrected by me)

B. N. LALGE, Presiding Officer
[No. L-42011/35/87 D H(A)]

नई दिल्ली 23 मई, 1989

का. प्रा. 1334--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार पश्चिम मेंवे के प्रबंधन में सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, सम्बन्ध में निम्नलिखित औद्योगिक विवाद में औद्योगिक शक्ति, जयपुर के संवाद को प्रस्तुत करता है, जो केन्द्रीय सरकार की 16-5-89 प्राप्त हुआ था।

New Delhi, the 23rd May, 1989

S.O. 1334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Railways and their workmen, which was received by the Central Government on the 16-5-1989.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर
केस नं. सीआईटी 80/84

मध्य

पश्चिमी रेलवे कर्मचारी परिषद अजमेर।

एवम्

1. जनरल मैनेजर पश्चिमी रेलवे, चर्च गेट बम्बई।
2. डिप्टी चीफ मैकेनिक इन्जीनियर (कैरिज) कारखाना पश्चिमी रेलवे।
3. उप. मुख्य कार्मिक अधिकारी (का) अजमेर अथवा म. या ई. (लो) अजमेर।

रेफरेंस :— अन्तर्गत धारा 10 (1) श्री औद्योगिक विवाद अधिनियम 1947,

उपस्थित :— 1. श्री आर. सी. नारंग प्रार्थी युनियन की ओर से उपस्थित।

2. श्री बी. एम. माथुर अधिवक्ता पश्चिमी रेलवे, अजमेर उपस्थित।

3. 29-3-8 दिनांक अधाई

घवाई

भारत सरकार के श्रम और पुनर्वासि मंत्रालय नई दिल्ली के ईमान अधिकारी ने उनके आदेश संख्या -एन-41012 (8)/84 डी II (बी) दिनांक 31-10-84 निम्न विवाद अन्तर्गत धारा 10 (1) (घ) औद्योगिक विवाद अधिनियम, 1947, जिसे न्यायपालिका अधिनियम लिखा जायेगा वास्ते अधिनिर्णायक इस न्यायाधिकरण को प्रेषित किया।

बाद प्राप्ति निर्देशन इसे इस न्यायाधिकरण में पंजीकृत किया गया उभय पक्षकारान को नोटिस जरिये पंजीकृत डाक भेजे गये। पश्चिमी रेलवे कर्मचारी परिषद जिसे न्यायपालिका परिषद लिखा जायेगा कि संयुक्त संवैधानिक अजमेर ने इस विवाद में स्टेट मॅन्ट ऑफ क्लेम निम्न प्रकार से प्रस्तुत किया।

यह है कि परिषद ने अधिनियम की धारा 22 के अन्तर्गत प्रार्थी अधिकारीगण को हड़ताल का नोटिस दिया था जिसके पश्चात केन्द्रीय सहायक श्रम प्रायुक्त अजमेर, के समक्ष समक्षता वार्ता प्रारम्भ हुई जो अमफल रही उसके पश्चात यह विवाद केन्द्रीय श्रम मंत्रालय द्वारा इस न्यायाधिकरण को भेजा गया। आगे व्यक्त किया श्री गोरधन सिंह पुत्र श्री स्वर्गीय बंजी लाल ठिकट नं. 263 को अनुकम्पा के आधार पर खलासी के पद पर 8-1-73 से राणा प्रताप नगर उदयपुर, में नियुक्त किया गया।

यह कि श्री गोरधन सिंह मई सन् 1974 की हड़ताल के दौरान बेकार्यरत हैं यह कि सन् 1974 की हड़ताल में बकादार रहने के कारण 3/रूपये की विशेष सरकारी दी गई जो एक वर्ष तक मिलनी रही। रेलवे प्रशासन ने एक वर्ष पश्चात ये सरकारी बन्द कर दी। आगे व्यक्त किया उक्त मुख्य व्यक्ति अधिनियम कैरिज के पद को आधार मानकर हेड चार्ज मैन उदयपुर ने अपने पत्र संख्या-74/भार-28/एफ दिनांक 7-10-74 के अनुसार श्री पुरुषोत्तम लाल पुत्र श्री गणेश जी. श्री राकेश जान, पुत्र जान जयन्ता लाल, अम्बुल रहमान पुत्र श्री उस्मान, एवम् श्री हेनेरी गोर्गोमन पुत्र श्री हरीश को 7-10-74 को लायल कोटी के आधार पर खलासी के पद पर नियुक्त किया, परन्तु रेलवे प्रशासन ने प्रार्थी गोरधन सिंह के बरिष्ठ होते हुए भी उक्त चारों व्यक्तियों को सेमी रेलवे पद पर पदोन्नत कर दिया प्रार्थी को अनुकम्पा के आधार पर नियुक्ती होने के कारण भर्ती हा. की निधि में ही

स्थाई भाला चला है उक्त प्रार्थी श्री गोरधन सिंह को लोधा कोटा भर्ती होने वालों में बरिष्ठ माना जाय एवम् बरिष्ठ होने के लिये भर्ती लाभ एवम् मुविदाने बिलामी जायें।

पश्चिमी रेलवे में बरिष्ठ कार्मिक अधिकारी कारखाना अजमेर, ने निम्न लिखित स्टेटमेंट ऑफ क्लेम का जवाब प्रस्तुत किया। यह स्वीकार किया कि पश्चिमी रेलवे कर्मचारी परिषद एक पंजीकृत संस्था है स्टेटमेंट ऑफ क्लेम चरण संख्या 2 स्वीकार करते हुए यह व्यक्त किया कि उनके पिता श्री मध्य के उदयपुर अनुकम्पा के आधार पर दिनांक 8-1-73 को सम्पाई रूप से नियुक्त किया गया। न्यायपालिका 8-7-73 को उनकी टेम्प्रेरी स्टेटम का दर्जा दिया गया था। न्यायपालिका प्रार्थी को खलासी के पद पर दिनांक 29-1-79 में नियुक्त कर दिया गया। आगे यह व्यक्त किया कि प्रार्थी ने सन् 1974 की हड़ताल में मस्टेड्यूट के रूप में यह स्वीकार किया कि प्रार्थी ने उस दौरान में तीन महीने अधिकतर प्रतिमात्र कार्य किया, आगे यह व्यक्त किया कि डिप्टी सी. ए. ई. कैरिज के आदेश दिनांक 28-8-78 के द्वारा हम तीन महीने प्रतिमात्र की बढ़ि को ममान किया गया और प्रार्थी को 100/-रुपये तक पुरस्कार दिया गया। आगे यह सही होना स्वीकार किया कि सर्व श्री पुरुषोत्तम लाल, राकेश जान, अम्बुल रहमान, व सोलोमन को 7-10-74 से खलासी के पद पर नियुक्त किया और इस नियुक्ति का यह कारण बताया गया कि इन चारों व्यक्तियों के पिता ने मई सन् 1974 की हड़ताल में भाग नहीं लिया था। उन्होंने रेलवे प्रशासन की बकादारी में माथ नौकरी की थी, तथा उसके पुरस्कार हेतु उनके मुम्बों को खलासी के पद पर नियुक्ति की गयी थी और चूंकि प्रार्थी मस्टेड्यूट के पद पर कार्य कर रहा था, इस कारण से उनको इस प्रकार का लाभ नहीं दिया जा सकता था। धारा 10 कारण से उसे नहीं दिया।

आगे व्यक्त किया कि प्रार्थी श्री गोरधन सिंह की कैटेगरी में जयपुर था जिसे 75-110 के सेमी स्केल ग्रेड में पदोन्नत किया गया और उसे आर. डब्ल्यू. सी. टी. का अधाई दिनांक 6-6-80 को दिया गया। आगे यह भी लिखा कि उक्त चारों कर्मचारी 1-8-79 से पूर्व डी. मैम. स्कीनड पदोन्नत किये गये थे अतः ये चारों व्यक्ति प्रार्थी श्री गोरधन सिंह से बरिष्ठ थे इस कारण से गोरधन सिंह को सेमी स्केल के पद पर पदोन्नत किये जाने का पत्र नहीं उठाया है इस कारण से श्री गोरधन सिंह को कोई लाभ नहीं दिया जा सकता।

प्रार्थी युनियन की ओर से श्री गोरधन सिंह ने उक्त शपथपत्र प्रस्तुत किया, जिसे इस न्यायाधिकरण द्वारा स्थापित किया गया। योग्य अधिकृत प्रतिनिधि रेलवे ने श्री गोरधन सिंह से जिरह की रेलवे की ओर से श्री मदन लाल ने अपना शपथपत्र प्रस्तुत किया जिसे श्री इस न्यायाधिकरण द्वारा स्थापित किया गया। कर्मकार के अधिकृत प्रतिनिधि ने श्री मदन लाल से जिरह की ओर माध्य समाप्त की।

मैंने बहुत योग्य अधिकृत प्रतिनिधि प्रार्थी युनियन एवम् योग्य अधिवक्ता प्रार्थी रेलवे मुनी हैं पञ्चायती का ध्यान पूर्वक अक्षुण्ण किया है न्यायालय के समक्ष विचारणीय प्रश्न निम्न प्रकार से है। क्या प्रार्थी गोरधन सिंह को 8-1-73 में बरिष्ठता नहीं दिया जाना (सी. एन. डब्ल्यू.) उप. मुख्य मैकेनिक इंजीनियर पश्चिमी रेलवे अजमेर के लिए उचित एवम् बंध था? उदयपुर प्रश्न को निर्णायित करने के लिए हमें उक्त पक्षकारों को माध्य को देखना है। प्रार्थी गोरधन सिंह ने उनके शपथपत्र में यह लिखा है कि उनके सेम प्रशासन 8-1-73 को अनुकम्पा के आधार पर मस्टेड्यूट खलासी के पद पर राणा प्रताप नगर कारखाने में उनके पिता के देहाल होने के पश्चात् नियुक्त किया था। आगे व्यक्त किया कि मई सन् 1974 की आम हड़ताल में भी उनके बकादारी कर्मचारी के लिये काम किया।

आगे बकादारी कि 4 खलासी सर्व श्री पुरुषोत्तम लाल, राकेश जान अम्बुल रहमान, व हरेरी सोलोमन को खलासी के पद पर सन् 1974 में नियुक्त किया। इस संबंध में यह भी लिखा कि हड़ताल की अधि

में हड़ताल पर रहने के कारण व्यक्ति बना वृद्धि हो गयी। आगे यह कहा कि सर्वश्री पुरुषोत्तम लाल राकेश जॉन, अमृतन रहमान, हरेरी सोलोमन की सन् 1974, की प्रार्थी से वरिष्ठ बना विवा जवाफ़ चारों कर्मचारी को पत्राचार पर दिया और प्रार्थी को पदोन्नति प्रदान नहीं की गयी। श्री मदन लाल ने भी उसके शपथपत्र में यह बात लिखी थी और गोरधन सिंह प्रथम नियुक्ति 8-1-73 से 70/—रहने प्रतिमाह पर अस्वास्थ्य और पर को गई तत्पश्चात् इसे 8-7-73 को टेम्पेरी स्टेटस दिया गया गया तथा 20-1-79 को उसे खलासी के पद पर अनुकम्पा के आधार पर नियमित किया गया तथा आगे यह भी स्पष्ट किया कि सन् 1974 में प्रार्थी को समीक्षा के पद पर कार्यरत होने के कारण वकाशारी का काम नियमानुसार नहीं दिया गया, उसे निर्देश अनुसार 3/—रहने प्रतिमाह अधिक वेतन दिया गया था किन्तु बाद में प्रशासनिक आदेश अनुसार इस वेतन को बन्द कर 100/—रहने तक ईनाम दिया गया, जिसमें यह स्वीकार किया कि पुरुषोत्तम अमृतन रहमान, हरेरी सोलोमन, को नियुक्ति गोरधन सिंह के बाद हुई थी। उपरोक्त साक्ष्य के विवेचन से प्रार्थी गोरधन सिंह ने जो उसके शपथपत्र में 8-1-73 को दत्त प्रशासन द्वारा अनुकम्पा के आधार पर उनके चित्त के देशान्तर होने पर खलासी पदों को लिखा था कि उनको सम्पूर्ण प.प. के कार्यालय आदेश उ. म. 00 या. ई. अन्वये के गान्धीय पत्र संख्या 3912/पू. डी. दिनांक 12-1-79 से हातो है जिसके अनुसार प्रार्थी गोरधन सिंह को नियुक्ति अनुकम्पा के आधार पर अनुरोध श्रेणी कर्मचारी के पद पर वेतन मान 196-232 में निर्धारित नियुक्ति करने की महमनि (संकेतन है वित्त प्रकोष्ठ की गई) गोया की 12-1-79 के इस आदेश में प्रार्थी गोरधन सिंह को नियुक्ति 196-232 के आधार पर प्रारम्भ से ही नियमित की गई यह भी स्वीकार किया जा चुका है कि अनुकम्पा के आधार पर जो भी नियुक्ति की जाती है वह स्थायी रूप से हो जाती है जब प्रारम्भ से गोरधन सिंह को नियुक्ति अनुकम्पा के आधार पर चतुर्थ श्रेणी खलासी के पद पर की गई तो वह स्थायी रूप से हो गई थी। प्रार्थी गोरधन सिंह का मई 1974 को हड़ताल में वकाशार रहना और वकाशार रहने के कारण तीन समय मासिक वेतन और बाद में वह तीन पार मासिक वृद्धि वह 100/—रहने ईनाम मिलना प्रमाणित हुआ है प्रार्थी गोरधन सिंह का कम सर्वश्री राकेश जॉन, पुरुषोत्तम लाल, अमृतन रहमान, हरेरी सोलोमन से भिन्न नहीं है जो भी उनके चित्तों द्वारा वकाशार रहने के कारण सन् 1974 में खलासी के पद पर भर्ती किये गये थे, जो निश्चय और पर ही गोरधन सिंह के बाद भर्ती हुए और उनसे वरिष्ठ थे। अनिष्ट व्यक्तियों का उनके सन् 1974 में 196-232 की श्रेष्ठ में पदोन्नति किये गये इसलिए भी गोरधन सिंह को 8-1-73 से वरिष्ठता नहीं दिये जाने में भूल को है और डिप्टी सूपर. मैकेनिकल इंजीनियर रेलवे ने गोरधन सिंह को वरिष्ठता 8-1-73 में न देना जाना अनुचित एवं अवैध था। प्रार्थी गोरधन सिंह दिनांक 8-1-73 में चतुर्थ श्रेणी खलासी के पद पर वरिष्ठता पाने का अधिकारी पाया जाता है अतः इसी प्रकार पंचाट प्रार्थी गोरधन सिंह के पक्ष में पारित का केन्द्रीय सरकार को वास्ते आवश्यक कार्यवाही हेतु भेजा जावे।

प्रभार सिंह यादव, सहायक

[मं. एन-41012/8/84-डी. II(बी)]

नई दिल्ली, 25 मई, 1989

फा.आ. 1335:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में, केन्द्रीय सरकार डिप्टीनर इंजीनियर, टेलेग्राफ के प्रबंधन में सम्प्रदा विधियों और उचित कर्मचारियों के बीच, अनुभव में निरिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार का 16-5-89 को प्राप्त हुआ था।

New Delhi, the 25th May, 1989

S.O. 1335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Divisional Engineer, Telegraphs, Udaypur and their workmen, which was received by the Central Government on the 16-5-89.

नई दिल्ली, 25 मई, 1989

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण जयपुर।

कैस मं. सी.आई.टी. 15/86.

केन्द्रीय सरकार अथ मंत्रालय की अधिसूचना सं. एन-40011(5)/85-डी. II(बी) दिनांक 17-3-86.

डिप्टीनर सैनेटरी, नेशनल यूनियन आफ टेलेग्राफ इंजीनियरिंग 94-वा. बाग, मोणापुरा उदयपुर।

—यूनियन

वकाश

डिप्टीनर इंजीनियर टेलेग्राफ, उदयपुर।

2-डिप्टीनर इंजीनियर फोन्स, उदयपुर।

—नियोजकगण

उत्तरिधि

मालतीय न्यायाधीश श्री प्रताप सिंह यादव, भार.ए.व.जे.एम. यूनियन पक्ष की ओर से:

यूनियन पक्ष की ओर से:

नियोजकगण की ओर से:

दिनांक प्रकाश:

श्री महेश्वर खमेटरा
कोई उत्तरिधि नहीं।

3-11-88

प्रकाश

भारत सरकार अथ मंत्रालय के ई.ई. अधिकारी ने जरिमे अधिसूचना सं. एन-40011(5)/85-डी. II(बी) दिनांक 17-3-86 निम्न अर्थात् धारा 10(1) औद्योगिक विवाद अधिनियम 1947 एवं धारा 2(ए) धारा 10 औद्योगिक विवाद अधिनियम 1947 वाले अधिनियमों के अन्वये न्यायाधिकरण को प्रेषित किया है—

"क्या डी.टी.टी. एण्ड डी.टी.टी. उदयपुर की 45 कर्मचारियों को बारे में जिनकी सूची संलग्न है, नैतिक न्याय के सिद्धांतों का उल्लंघन करने वाले हुए 30-8-84 की 11 से 12 बजे तक एक घंटे को हड़ताल के लिए एक दिन की मजदूरी की कटौती करने को कार्यवाही स्वीकारित है? यदि नहीं, तो कर्मकार और अनुवोष के हकदार है?"

2. बाद प्राप्त निर्देशन इस विवाद को पंजीकृत किया गया और उभय पक्षकारों को नोटिस जरिमे पंजीकृत डाक भेजे गये। श्री विजय सिंह नेशनल यूनियन आफ टेलेग्राफ इंजीनियरिंग एम्प्लोईज को कार्य-कारिणी के सदस्य ने स्टेटमेंट आफ क्लेम इस प्रकार पेश किया। यह कि डी.ई.टी. और डी.ई.पी. उदयपुर मंडल के कर्मचारियों ने एक घंटे की दूत डाउन हड़ताल 30-8-84 को एफ.एन.पी.टी.ओ. एण्ड एन.एफ.पी.टी. ई. के फैबरेगन्स को सप्ताह पर इस कारण से की थी कि प्रबंधकों का ध्यान काफी समय से लब्धित चलो आ रही मांगों को न्य करने पर बिगारा। यह कि डी.ई.टी. और डी.ई.पी. के प्रबंधकों और कर्मचारियों को वेतन देने वाले व्यक्तियों ने कर्मचारीगण के जिनकी कि लिस्ट स्टेटमेंट आफ क्लेम के साथ लगाई गई है, सिम्बल, 84 के वेतन में से एक दिन का वेतन एक घंटे को हड़ताल करने की सूचना में काट लिया। आगे यह अभिवचन रखा कि वह हड़ताल तमाम भारत में संबंधित एक मजदूरी था और वह मामला महानिर्देशक, पोस्ट एण्ड टेलेग्राफ नई दिल्ली सेना इन काम में तय नहीं किया गया था कि वेनेज

काटे जायें या नहीं? परन्तु स्थानीय प्रबन्धकों ने इस मामले को वस्तुतः रखने की अपेक्षा एक सारे दिन का वेतन काट लिया और प्रबन्धतंत्र ने न तो टूल हाउस हड़ताल के संबंध में उच्च अधिकारियों को सूचना दी न ही उच्च अधिकारियों द्वारा इस हड़ताल को अवैध घोषित कराया और महकमें में इस प्रकार के मामले पर कोई प्रतिबन्ध नहीं था, इसलिए प्रबन्ध तंत्र द्वारा मन मकसूद तरीके से कर्मचारियों की परेशान करने के लिए एक घंटे की हड़ताल के लिए सारे दिन का वेतन काट लिया। अन्त में यह अनिवार्य रखा कि प्राकृतिक न्याय के सिद्धान्तों के न मानते हुए प्रबन्धतंत्र का यह कार्य द्वेषपूर्ण था और इस प्रकार से ये बेजैसे काटने के लिए कर्मचारियों को कोई नोटिस नहीं दिया गया था और न ही उन्हें इसका कोई ज्ञान था। इस संबंध में स्टेटमेंट आफ क्लेम के साथ श्री विजय सिंह ने 62 कर्मचारियों की लिस्ट पेश की है। दूसरी लिस्ट 24 व्यक्तियों की पेश की और तीसरी लिस्ट 31 व्यक्तियों की पेश की। विपक्षी नियोजक संस्थान की ओर से बावजूद नोटिस प्राप्त के कोई उत्स्थित नहीं आया इसलिए उनके खिलाफ दिनांक 12-4-88 को एक पक्षीय कार्यवाही किये जाने का आदेश पारित किया गया। प्रार्थी मूलियन की ओर से श्री वसन्त वल्लभ जोशी, श्री विमल प्रकाश लहोती एवं श्री शम्भू लाल कुण्ठावत ने अपने शपथ पत्र पेश किये। न्यायालय ने इन्साफ की दृष्टि से उनसे कुछ प्रश्न भी और पूछे।

3. मैंने बहुत योग्य अधिकृत प्रतिनिधि श्री जे. एल. शाह सुनी है और पताचल का ध्यानपूर्वक अवलोकन किया है।

4. इस मौजूदा रैफरेंस में 45 कर्मचारों का, एक घंटे की हड़ताल 3-8-84 को करने पर एक दिन का वेतन काटने के बारे में विवाद पेश हुआ है और यह देखना है कि आया इस प्रकार एक घंटे की हड़ताल खोने की सूरत में क्या एक दिन का वेतन उन 45 कर्मचारों का काटना उचित एवं न्यायसंगत है या नहीं? मगर खेद की बात यह है कि रैफरेंस के साथ एक लिस्ट 31 कर्मचारों की और दूसरी लिस्ट 24 कर्मचारों की न्यायाधिकरण में पेश की गई है इस प्रकार 31 और 24 मिलाकर कुल 55 कर्मकार हो जाते हैं जिनकी कि सूची पेश की गई है। फिर इनके अतिरिक्त एक लिस्ट 62 व्यक्तियों की दूसरी लिस्ट 24 कर्मचारों की और तीसरी लिस्ट 31 कर्मचारों की स्टेटमेंट आफ क्लेम के साथ पेश की गई है, इस प्रकार तीनों लिस्टों में 117 कर्मचारों का एक दिन का वेतन काटने का विवाद जाहिर होता है। रैफरेंस में 45 कर्मचारों का वेतन काटने का विवाद न्यायाधिकरण को निर्दिष्ट किया गया परन्तु यह निश्चित नहीं हो पाया कि वे 45 कर्मकार कौन कौन हैं। औद्योगिक विवाद अधिनियम, 1947 की धारा 10(4) के संबंध में 1956(1) एल. एल. जे. 679 (एल. ए. टी.) में लेबर अपीलेट ट्रिब्यूनल ने यह विनिश्चित किया है कि—

“The scope of adjudication is entirely limited and determined by the reference and it is not open to any tribunal to travel outside the same and to decide the question on fanciful notions of social justice(y).”

5. उपरोक्त विनिश्चयन से यह स्पष्ट हो जाता है कि धारा 10(4) अधिनियम के तहत न्यायाधिकरण की अधिकारिता निदेशन में रखे विवाद की हद तक ही रहती है वह स्वयं उसमें सामाजिक न्याय के सिद्धान्तों को कहकर निदेशन में बाहर के तथ्यों को शामिल नहीं कर सकता है। इस सारे निदेशन में 45 व्यक्तियों का एक दिन का वेतन एक घंटे की हड़ताल पर काटने का विवाद है। मगर ये 45 व्यक्ति कौन हैं ये रैफरेंस के साथ पेश हुई लिस्ट से निश्चित नहीं होता है क्योंकि स्टेटमेंट आफ क्लेम के साथ 117 व्यक्तियों की लिस्ट पेश की गई है। साक्ष्य में मूलियन के साक्षियों की जो साक्ष्य पेश हुई है उसमें भी वे कर्मकार व्यक्तिगत तौर पर नामजद नहीं हुए हैं और इस प्रकार 45 व्यक्तियों की लिस्ट पेश न होने न उनके नामजद होने की सूरत में ये रैफरेंस इस प्रकार चलने योग्य नहीं पाया जाता है। विशेष तौर पर से किन किन व्यक्तियों की एक दिन की तनख्वाह अवैध एवं अनुचित तौर से काटी गई, यह स्पष्ट न होने की सूरत में किसको क्या अनुतोष दिलाया जाये इसके अभाव में इस रैफरेंस में “नो डिस्पूट” अवार्ड पारित करना ही

न्यायसंगत ही है। इस रैफरेंस को या रैफरेंस के साथ स्टेटमेंट आफ क्लेम के साथ पेश की गई कर्मचारों की लिस्ट को संशोधित भी नहीं कराया गया। इसके अभाव में “नो डिस्पूट” अवार्ड पारित किया जाता है। इसकी प्रतिलिपि केन्द्र सरकार को वास्ते प्रकाशनार्थ अन्तर्गत धारा 17(1) अधिनियम भेजा जावे।

प्रताप सिंह यादव, न्यायाधीश

[सं. एल०-40011/5/88-डि० II (बी०)]

का.आ. 1336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रेलवे प्रशासन अजमेर डिविजन के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Railway Administration, Ajmer Division and their workmen, which was received by the Central Government on the 16-5-89.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

उपस्थिति :—माननीय न्यायाधीश श्री प्रताप सिंह यादव
सी. आई. टी. :—70/84

मध्य

मण्डल सचिव पश्चिम रेलवे कर्मचारी परिषद्, 8 सोनी धर्मशाला
पृथ्वीराज मार्ग, अजमेर।

एवम्

1. श्री जगतल मनेजर चर्चगेट बम्बई।
2. डिविजन मैनेजर पश्चिम रेलवे, अजमेर।

रैफरेंस :—अन्तर्गत धारा 10 (1) (घ) औद्योगिक विवाद अधिनियम, 1947

उपस्थिति :—1. श्री आर. सी. नारयण अधिकृत प्रतिनिधि पश्चिम रेलवे कर्मचारी परिषद् अजमेर।

2. श्री बी. एल. भागुर अधिवक्ता रेलवे उपस्थिति।

3. दिनांक अगस्त :—23-3-88

अवार्ड

भारत सरकार के श्रम एवम् पुनर्वास मंत्रालय नई दिल्ली, के उपसचिव, ने उनकी आज्ञा संख्या एल-41012 (5)/84-डी II (बी) जुलाई 1984, के जरिये निम्न विवाद अन्तर्गत धारा 10(1) डी औद्योगिक विवाद अधिनियम, 1947, जिसे तत्पश्चात् अधिनियम लिखा जायेगा, वास्ते अधिनिर्णयार्थ प्रस्तुत किया।

“Whether the Railway administration of Ajmer Division is justified in terminating the services of Shri Mahendra Kumar S/o Shri Laxmi Narayan who was declared medically unfit in category A/2 without observing the provisions of Section 25F of the I.D. Act, 1947? If not, to what relief the workman is entitled?”

स्टेटमेंट आफ क्लेम में प्रार्थी श्रमिक के बारे में यह जाहिर आया है कि श्री महेंद्र कुमार पुत्र श्री लक्ष्मी नारायण को प्रारम्भ में केजुवल लेबर के रूप में लगाया गया और वह उसने 21-1-74 से 8-7-74 तक

श्री. एस. आई. (कन्टेन्शन) अजमेर, बभीर खलामी कार्य किया। उनके पञ्चात् दिनांक 23-3-77 तक कार्य किया। मगर यहाँ यह आरोप लगाया कि प्राथी अधिक: अस्थाई स्टेशन का अधिकारी होते हुए, उसे गलत तरीके से डिमिशन दिया गया। आगे लिखा दिनांक 29-12-77 को उसे पुनः पानी वालों में लगाया गया और उसका 10-9-79 को कंटेनरी ए/2 के लिए फिट होना घोषित किये जाने का प्रमाणपत्र श्री. एम. ओ. अजमेर ने दिया, और उसे टेम्पेरी स्टेशन 2-5-80 का दिया गया जहाँ उसने 10-12-82 तक ही कार्य किया। प्राथी अधिक: महेश कुमार को द्वारा परीक्षण के लिए भेजा गया और यह ए/2 कंटेनरी में अनाफिट घोषित किया गया और उसके बाद उसे इयूटी पर नहीं लिया गया। उल्लेखित तथ्य लिखते हुए स्टेट मेन्ट आफ क्लेम में यह व्यक्त किया है।

श्री महेश कुमार प्राथी अधिक: की सेवाएँ 18-11-82 में डाक्टरों परीक्षा में फेल हो जाने के कारण बिना नोटिस दिये, वह बिना नोटिस अधिक: का मुआवजा दिये समाप्त की गई। धारा 25एफ अधिनियम के प्रावधानों का उल्लंघन करते हुए समाप्त की गई। इसलिए उसे 18-11-82 से भी लगातार सेवा में रहना माना जावे।

आगे यह व्यक्त किया कि प्राथी अधिक: प्रारम्भ की नियुक्ति में एक बदली वाला व्यक्ति के रूप में गरम मौसम की रिक्त स्थान पर 25-3-77 से 28-7-77 तक 120 दिन से अधिक कार्य किया इसलिए उसने 120 दिन से अधिक लगातार सेवा करके 25-7-77 को अस्थाई स्टेशन प्राप्त कर लिया। आगे ये भी अधिपत्र रखा की भारतीय रेलवे नियोजित मैन्थल के पैरा 2318 के अनुसार प्राथी अधिक: को सभी उद्देश्यों के लिए यानी, वेतन महंगाई भत्ता, मकान किराया, भविष्य निधि फंड के लिए उसे अस्थाई कर्मकार माना जावे।

आगे व्यक्त किया कि प्राथी का इस प्रकार अस्थाई स्टेशन प्राप्त करने के पञ्चात् रेलवे के महाप्रबन्धक के पत्र संख्या ई. 523/0 दिनांक 9-7-76 के पैरा संख्या 4 के अनुकरण में उसकी सेवा मेडिकल प्राउंड पर इस प्रकार से सेवा समाप्त नहीं की जा सकती थी।

अप्राथी रेलवे की ओर से स्टेट मेन्ट आफ क्लेम का उत्तर रूप प्रस्तुत किया कि श्री महेश कुमार पुत्र श्री लक्ष्मी नारायण प्रारम्भ से यातायात विभाग में 25-3-77 को लगाया गया था और 120 दिन का लगातार कार्य पूरा होने पर उसे 2-5-80 से अस्थाई स्टेशन रेलवे आदेश दिनांक 11-12-80 के अनुसार दिया। तत्पश्चात् महाप्रबन्धक पश्चिम रेलवे बम्बई के पत्र संख्या ई. पी. 691/0 दिनांक 23-8-79 अनुसरण में उसे मेडिकल परीक्षा ए/2 कंटेनरी के लिए अनाफिट पाया गया और इस प्रकार महेश कुमार को चिकित्सा परीक्षण के उत्तरांत अनाफिट पाये जाने के बाद वह हाज़िर नहीं आया और यदि वह 10-11-82 के पञ्चात् भी सेवा पर हाज़िर नहीं आया तो भी जैसा की उसके खिलाफ यह आरोप लगाया गया है उसकी सेवा समाप्त किये जाने से पूर्व औद्योगिक विवाद अधिनियम के तहत नोटिस दिया जाना आवश्यक था।

आगे यह व्यक्त किया कि महेश कुमार मेडिकल कंटेनरी ए/2 में फिट नहीं हुआ था। और ट्रेफिक डिपार्टमेंट में उसकी नियुक्ति के लिए यह आवश्यक शर्त थी इसलिए उसे ट्रेफिक डिपार्टमेंट में नहीं लगाया गया। आगे यह एतराज दिया यह औद्योगिक विवाद अधिनियम के तहत छंटनी का रोग नहीं और आगे यह एतराज दिया कि श्री महेश कुमार रेलवे प्रशासन की सेवा में नहीं है इसलिए उसकी बरिष्ठता बिलाये जाने का क्लेम चलने योग्य नहीं है। आगे यह भी एतराज दिया कि श्री महेश कुमार मेडिकली अनाफिट घोषित हो जाने के बाद इयूटी के लिए रिपोर्ट नहीं की और इस प्रकार उसने स्वयम् से सेवा छोड़ दी है। यह भी एतराज दिया कि धारा 25एफ अधिनियम के प्रावधान उसके क्लेम में लागू नहीं है उसका क्लेम धारा 2(00) अधिनियम के परन्तुक की परिधि में आता है। आगे यह भी एतराज दिया सन् 1982 में प्राथी अधिक: ने 6 साल की लगातार सेवा पूरी नहीं की थी। आगे यह भी एतराज दिया कि प्राथी के स्वयम् के कलम के अनुसार उसने बीच सिंगल इन्स्पेक्टर (कन्टेन्शन) के तहत काम किया जो एक अस्थाई महकमा हो कर उसका

एक अलग अस्थित्व है और फिर उसने 25-3-77 से यानी 3 साल के पञ्चात् काम किया यानी 25-3-77 के बाद किया जिसमें उसके 6 वर्ष की सेवा पूरी नहीं होती थी इस प्रकार प्राथीना की कि प्राथीना पक्ष को निरस्त किया जावे।

प्राथी यूनिशन की ओर से महेश कुमार के क्लेम की सम्पत्ती में उसका स्वयम् का पञ्चात् पत्र दिया जिसमें व्यापारिकरण द्वारा स्थापित किया गया। और रेलवे के योग्य अधिकृतता ने महेश कुमार से निरस्त की। तत्पश्चात् रेलवे की ओर से श्री बी. एस. वर्मा हेड क्लेक डी. आर. एम. अधिक: अजमेर, ने आना शपथपत्र पेश किया जिसमें इस व्यापारिकरण द्वारा स्थापित किया गया और प्राथी यूनिशन के अधिकृत प्रतिनिधि ने श्री बी. एस. वर्मा से प्रतिपरीक्षण किया।

वहम योग्य अधिकृत प्रतिनिधि प्राथी यूनिशन वह वहम योग्य अधिकृतता पूर्ण गयी। पञ्चात् की का ध्यानपूर्वक अवलोकन किया गया। उक्त पक्ष कारण के अधिकृतता को पेश की गयी साक्ष्य को गौर करने से इस व्यापारिकरण के समक्ष बिनादर्शक प्रश्न है कि आया श्री महेश कुमार प्राथी की सेवाएँ पश्चिम रेलवे प्रबन्धक रेलवे प्रशासन अजमेर मण्डल द्वारा उत्तरी मेडिकली प्रयोग घोषित किये जाने पर धारा 25एफ औद्योगिक विवाद अधिनियम के प्रावधान को पूर्ण किये बिना समाप्त करना उचित एवम् वैध है? इस सम्बन्ध में श्री महेश कुमार ने उनके शपथपत्र में यह तथ्य व्यक्त किये हैं। उसने 21-1-71 से 8-7-74 तक मुख्य सिगनल निरीक्षक (कन्टेन्शन) के यहाँ खलामी के पद पर कार्य किया और ब्यावर स्टेशन पर उसने 25-3-77 से 29-7-77 तक पानी वालों में कार्य किया और आगे व्यक्त किया कि 29-12-77 से उसे पुनः पानी वाले पक्ष पर नियुक्त किया। तत्पश्चात् उसकी डाक्टरों परीक्षा ए/2 के बारे में दिनांक 10-9-79 को हुई जिसमें उसे पास घोषित किया। 2-5-80 को आगे व्यक्त किया रेलवे प्रशासन ने उसे द्वारा कंटेनरी ए/2 के लिए परीक्षण के लिए भेजा गया। परन्तु उक्त ए/3 में ही पास किया गया और डाक्टरों परीक्षण के फलस्वरूप कंटेनरी ए/2 में फेल हो जाने के कारण उसे नौकरी में बिना कोई निविदा भुजना आदि दिये नियमों के विरुद्ध अलग कर दिया गया। आगे यह भी शपथपत्र यह भी व्यक्त किया ना तो उसे निट्रिन्मेन्ट का नोटिस दिया ना ही उसे छंटनी का मुआवजा दिया। रेलवे प्रशासन का यह कहना गलत वह स्वयम् नौकरी पर नहीं आया। इसके मध्य मुकाबिल श्री बी. एस. वर्मा ने उनके शपथपत्र में यह तथ्य लिखाये हैं। श्री महेश कुमार शर्मा को यातायात विभाग में 25-3-77 को लगाया गया था और उसने 120 दिन कार्य पूरे करने पर 2-5-80 से टेम्पेरी स्टेशन दिया गया। आगे व्यक्त किया श्री महेश कुमार को छंटनी किये जाने वाले कमेटी के समक्ष नियमित नियुक्ति दिये जाने के लिए भेजा गया जिस मेडिकल परीक्षण के उत्तरांत श्री महेश कुमार ए/2 कंटेनरी में फेल हुआ और वह स्वयम् उसके पञ्चात् हाज़िर नहीं आया वह स्वयम् ही अपनी इयूटी अनुपस्थित हो गया।

उभय पक्ष कारण की माध्य से बखूबी प्रमाणित है श्री महेश कुमार को 25-3-77 को ब्यावर स्टेशन पर पानी वालों में नियुक्त किया गया था उसने 29-7-77 तक पानी वालों में काम किया। वह तत्पश्चात् महेश कुमार 29-12-77 से 10-11-82 तक पानी वालों में कार्य किया और श्री महेश कुमार का 10-9-79 का डाक्टरों परीक्षण हुआ तो कंटेनरी ए-2 में वह फिट पाया गया। आगे साक्ष्य से यह प्रमाणित होता है। पुनः प्राथी की नियमित अपाईमेंट दिये जाने डाक्टरों परीक्षण कराया गया तो प्राथी कंटेनरी ए-2 में अनाफिट घोषित किया गया इस तिथि के पञ्चात् प्राथी ने हाज़िर किया उसे इयूटी पर नहीं भिजा ना ही उस कंटेनरी ए-3 की जोब दी, ना सेवा समाप्त का मुआवजा दिया। रेलवे की ओर से श्री बी. एस. वर्मा ने स्वयम् का इयूटी पर न आना लिखाया है। मगर उसका कलम यह तथ्य विरुद्ध नहीं है कि यह स्वयम् 10-11-82 के बाद अनुपस्थित हो गया। प्राथी स्वयम् ने अपने शपथ पूर्व ब्यान में यह लिखाया है कि उसने उसके पञ्चात् बहुत कोशिश की वह अधिकृत गया सबसे प्राथीना की ओर प्राथीनागत भी दिया। उसने यह भी अपने प्रतिपरीक्षण में लिखाया है कि डी.पी.आ. ने कहा कि मुम्हारा बॉर्ड

बैठेगा जब बुला लिया जायेगा। मगर रेलवे की ओर से ऐसा भी कोई प्रत्येक्ष पेश नहीं हुआ जिससे कि ये जाहिर होता कि रेलवे प्रशासन ने प्रार्थी को मैट्रिकल कैटेगिरी ए-2 में अन्तर्भूत हो जाने के पश्चात् किसी दूसरी मध्य के लिए बुलाया हो। प्रार्थी अधिक ने डी.आर.एम. तक प्रार्थना की उम्मेद यूनिनियन के माध्यम से श्रम-विभाग के अधिकारियों तक प्रयत्न किया और बाद में आपसी समझौते की बातों असफल होने के बाद वह निर्देशन एवं स्थापनाधिकरण में आया इस प्रकार प्रयत्न करने से प्रार्थी के स्वयं के मुद्दों पर बहुत अधिक जानकारी से नहीं आया हो। निम्नलिखित है पर प्रार्थी को सेवा समाप्ति से पूर्व टेम्पेरी रेट्स मिल चुका था। वह 29-12-77 में कार्य कर रहा था तथा 10-12-82 तक लगातार कार्य किया यह भी प्रमाणित होता है कि उसकी सेवा समाप्ति से पूर्व उसको ना कोई निश्चय में नोटिस दिया ना ही छुट्टी मुआवजा दिया ना ही नोटिस अवधि का वेतन दिया।

रेलवे एम्प्लोयिजमेंट एंड बैलूंस 1 के नियम 149 के मुताबिक उपनियम 1 को निम्न प्रकार है।

"Not with standing any thing contained in clauses (1), (2) and (4) of this rule, if the Railway Servant or apprentice is one of whom the provisions of the Industrial Disputes Act, 1947 apply, he shall be entitled to notice or wage in lieu thereof in accordance with the provisions of that Act."

के अनुसार नियम 119 में जिस (1) (2) (4) के प्रावधानों के हानि हुए भी कोई रेलवे कर्मचारी या अप्रेंटिस जिस पर औद्योगिक विवाद अधिनियम 1947, के प्रावधान लागू होते हैं उसको इस अधिनियम के प्रावधानों के अनुसार सेवा समाप्ति से पूर्व नोटिस या नोटिस अवधि का वेतन दिया जाना आवश्यक है। मौजूदा प्रकरण में प्रार्थी महेन्द्र कुमार ने बनौर जगुथ थ्रेफा पानी बावों में लगातार 29-12-77/10-12-82 तक कार्य किया सेवा समाप्ति से पूर्व एक सैलरिडर वर्ष में 210 दिन से अधिक कार्य करने वाला औद्योगिक कर्मचारी हो गया था उसकी सेवा समाप्ति से पूर्व उसे कोई नोटिस नहीं दिया गया, ना ही नोटिस अवधि का मुआवजा दिया गया ना ही उसे कैटेगिरी ए-3 पर किसी मुताबिक अग्रे पर लगाया गया उसका स्वयं नौकरी छोड़ देना गलत प्रमाणित हुआ है। ऐसी स्थिति में उसकी सेवा समाप्ति छुट्टी की परिभाषा में आती है और वह छुट्टी धारा 25 एफ अधिनियम के प्रावधानों परियोजना किये जाने से अवधि छुट्टी की। के आगम प्रार्थी अधिक सेवा समाप्ति से पूर्व एक द वेतन पर भुगतान होने योग्य था। मगर प्रार्थी कैटेगिरी ए-3 पर हो गया के इन्फिने मैट्रिकल योग्यता अनुसार वह पर पाने का अधिकारी है।

अन्य अर्थात् निम्न प्रकार प्रार्थी के पक्ष में इस प्रकार पारित किया जाता है। यह कि श्री महेन्द्र कुमार एवं श्री कर्मवीर नारायण जिसे मैट्रिकल कैटेगिरी ए-2 में अयोग्य रेलवे प्रशासन अजमेर, द्वारा किया गया उस में धारा 25 एफ अधिनियम के प्रावधानों की परियोजना नहीं की गई। इस प्रकार श्री महेन्द्र कुमार की सेवा समाप्ति अनुचित अवधि थी। प्रार्थी मैट्रिकल कैटेगिरी ए-3 में उसकी पात्रता के अनुसार यह जोष पाने का अधिकारी है। जिसे रेलवे प्रशासन ओर कर इस पक्षों की प्रमाणों के। महीने के अन्तर अपना नोटिफिकेशन जारी कर उसे काम विनियमों के अंतर्गत का रेट्स पर 11-12-88 से प्राप्त करेगा और उस पर अगस्त मास 11-12-80 में उसे जोष रिते जाने की तिथि तक नमसी जायेगी। इस धोखा अज्ञान रूप वेतन भत्ते याद के अनिश्चित अन्य उत्पन्न हुए देश नाम को वह प्राप्त करेगा। अर्थात् श्री प्रानिधिप चन्वरन धारा 17(1) औद्योगिक विवाद अधिनियम केन्द्रीय सरकार या सेवा जाये।

श्री प्रताप सिंह यादव, न्यायाधीश

[सं. एन-41012/5/84-डी-11(बी. 1)]

का. अ. 113/ औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रेलवे प्रशासन, अजमेर विभाग, अजमेर के प्रवर्तक में सम्बद्ध नियोजकों और उनके

कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, अजमेर के संघटन को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 प्राप्त हुआ था।

1337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Railway Admin. Ajmer Division, Ajmer and their workmen, which was received by the Central Government on the 16-5-89.

परिणाम

केन्द्रीय औद्योगिक न्यायाधिकरण, अजमेर

केस सं. सी.आर्.टी. 24/1985

केन्द्र सरकार श्रम मंत्रालय की अधिसूचना संख्या.

एन-41012(28)/84-डी.11(बी) दिनांक 10-4-85

मैट्रिकरी, पश्चिम रेलवे कर्मचारी परिषद, कसौली, धर्मपाला पश्चिम राज मार्ग, अजमेर।

--यूनिनियन

बताया

शिबीजनन परमेश्वर आफिसर, वेस्टर्न रेलवे, अजमेर।

2 जनरल मैनेजर, वेस्टर्न रेलवे, जयपुर, बम्बई।

--नियोजकगण

उपरिधित.

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर.एच.मै.एन.

यूनिनियन की ओर से. श्री मुरेश्वर कुमार गोवाल

नियोजकगण की ओर से. श्री श्री.एम. माथुर

दिनांक अर्थात्.

15-10-88 (केस अजमेर)

अर्थात्

केन्द्रीय सरकार ने निम्न विवाद इस न्यायाधिकरण को वास्तविकता के रूप में अधिसूचना सं. एन-41012(28)/84-डी.11(बी) दिनांक 10-4-85 के द्वारा औद्योगिक विवाद अधिनियम 1947 की जिसे तत्पश्चात् अधिनियम किया जायेगा धारा 10(1)(डी) संशोधित उपधारा-2(ए) के अन्तर्गत प्रेषित किया है--

"Whether the Railway Administration of Western Railway, Ajmer Division, Ajmer was justified in not granting the officiating allowance to Shri Nait Ram S/o Shri Mansha Ram who has claimed to have worked as Jeep Driver with effect from 7-7-1977 to 19-4-1980? If not, to what relief the workman is entitled?"

2. उक्त निर्देशन के प्राप्त होने पर इस न्यायाधिकरण ने इसे परीक्षण किया। परीक्षण किये जाने के पश्चात् उक्त पक्षों के नोटिस अधिपति परीक्षण आक दिये गये। प्रार्थी यूनिनियन की ओर से मधुकर मंडप मंत्री, पश्चिम रेलवे कर्मचारी परिषद, अजमेर ने प्रार्थी नेतरान के संबंध में ग्रेडिड आफ नैम संक्षिप्त में निम्न प्रकार प्रस्तुत किया।

3. यह कि पश्चिम रेलवे कर्मचारी परिषद एक पंजीकृत संस्था है, जिसने अधिनियम की धारा-22 के अन्तर्गत मुद्रांकन का नोटिस दिया था, जिसमें कर्मचारी मंत्रालय श्रम आणखन अजमेर ने प्रार्थी के पिता बलादा परन्तु वाता असफल हुई व तत्पश्चात् उक्त विवाद केन्द्रीय श्रम मंत्रालय से इस न्यायाधिकरण को सेवा गया है। यह कि विवाद श्री नेतरान श्रमियों निम्नलिखित निरीक्षण (यातायात) कारखाने अजमेर में संबन्धित है, जिसे तत्पश्चात् प्रार्थी सम्बन्धित किया जायेगा यातायात किया कि श्री नेतरान यातायात कारखाने में श्रमियों की नियुक्ति में मई 1975 में

भर्ती हुआ, आगे व्यक्त किया कि सन् 1977 से 1980 तक नियमित रूप से मंडल कार्यालय में जीप ड्राइवर के पद पर कार्य करता रहा, जिस पद का आफिसियेटिंग अलाउन्स रेलवे शासन ने नहीं दिया। श्री नेतराम ने जीप ड्राइवर का आफिसियेटिंग अलाउन्स मांगा था एवं रेलवे शासन में यह भी प्रार्थना की थी कि उसे जीप सहायक के पद पर स्टाई किया जावे। यह भी व्यक्त किया कि श्री. पी. ओ. अजमेर ने उसके पत्र सं. ई/डी/831/29 दिनांक 20-4-80 को बताया कि जीप ड्राइवर की एक पोस्ट बना दी गई है और 20-4-80 से 1981 तक अडहोक आधार पर प्रार्थी नेतराम ने कार्य किया परन्तु रेलवे प्रशासन, अजमेर ने प्रार्थी को जीप ड्राइवर के पद से हटाकर श्री नारायण को जीप ड्राइवर के पद पर लगाया परन्तु दिनांक 1-6-1982 को फिर पदावनत कर आई.ओ. इन्सु. अजमेर प्रार्थी से ड्राइवर का कार्य करवाया। इस प्रकार प्रार्थी नेतराम से बी० पी० ओ. अजमेर ड्राइवर का काम करवाते रहे और जब काड़ा हटा दिया, अतः प्रार्थना की कि नेतराम को पुनः ड्राइवर के पद पर लगाया जावे एवं 1977 से 1980 तक जीप ड्राइवर के पद का वेतन दिनवारी जावे जिस पद पर उसने कार्य किया व 1980 से नियत होने तक ड्राइवर के पद का वेतन भत्ते व अन्य सुविधाओं में वरिष्ठता भी सहित प्रदान की जाये।

4. अप्रार्थी मंडल कार्मिक अधिकारी पश्चिम रेलवे, अजमेर ने उत्तर क्लेम मिन्स प्रकार से पेश किया। उत्तर क्लेम में यह स्वीकार किया कि पश्चिम रेलवे कमचारी परिषद एक पंजीकृत संस्था है, जिस औद्योगिक विवाद अधिनियम की धारा 22 के तहत नोटिस दिया और केन्द्रीय श्रम मंत्रालय के उक्त आदेश के द्वारा विवाद इस न्यायाधिकरण को भेजा गया। यह भी स्वीकार किया कि श्रमिक नेतराम पुत्र मन्साराम खल्लासी निर्माण निरीक्षण यातायात कारखाना, अजमेर ने 1975 में मुलाजिम हुआ, आगे यह अभिवधान रखा कि इन्स्पेक्टर आफ वर्क्स (यातायात) अजमेर के द्वारा रखे गये मस्ट्रोल से यह जाहिर होता है कि प्रार्थी नेतराम इन्स्पेक्टर आफ वर्क्स के तमहान खल्लासी के रूप में कार्य करता था। इसलिए वह जीप ड्राइवर के वेतन का आफिसियेटिंग अलाउन्स पाने का अधिकारी नहीं है। व बतौर जीप ड्राइवर की पोस्ट पाने का अधिकारी नहीं है।

5. प्रार्थी युनियन के क्लेम की सम्पुष्टि में नेतराम प्रार्थी का गणप पत्र पेश किया गया जिसे इस न्यायाधिकरण द्वारा सत्यापित किया गया एवं योग्य अभिवक्ता अप्रार्थी रेलवे प्रार्थी युनियन ने अपनी साक्ष्य समाप्त की। अप्रार्थी रेलवे को साक्ष्य प्रस्तुत करने के लिए तीन अवसर दिये गये मगर बावजूद इस गहर अवसर दिये जाने के रेलवे की ओर से कोई साक्ष्य प्रस्तुत नहीं की गई अतः रेलवे को साक्ष्य बन्द की गई।

6. मैंने बहुत योग्य अधीक्षक प्रतिनिधि प्रार्थी युनियन (सहस्रजिव युनियन) एवं अधिवक्ता अप्रार्थी रेलवे सुनी है। पत्रावली का ध्यानपूर्वक अवलोकन किया है।

7. इस न्यायाधिकरण के समय विचारणीय प्रश्न यह है कि आया रेलवे प्रवक्ता पश्चिम रेलवे, अजमेर प्रार्थी नेतराम पुत्र श्री मन्साराम को 7-7-1977 से 19-4-80 तक ड्राइवर के पद पर कार्य करने का अलाउन्स न देने में सही व जस्टीफाई थे? उपरोक्त विचारनबिन्दु को निर्णित करने के लिए इस विवाद के संबंध में यह निर्णित करना है कि श्री नेतराम पुत्र मन्साराम ने 7-7-77 से 19-4-80 तक ड्राइवर के पद पर कार्य किया था या नहीं? इस प्रश्न के संबंध में प्रार्थी नेतराम पुत्र मन्साराम का शपथपत्र विचारनिर्णय है। श्री नेतराम ने उसके शपथ पत्र के कथन में यह व्यक्त किया कि उसने वर्ष 1977 से 1980 तक जीप सं. एम.पी.जी. 7110 पर बतौर ड्राइवर के कार्य किया और इस जीप की लागत रुक सन् 1977 से 1980 तक उसके द्वारा बरी गई। आगे यह भी व्यक्त किया कि इस अवधि में उससे ड्राइवर का कार्य तो लिया परन्तु वेतन ड्राइवर के पद का नहीं दिया गया आगे यह भी व्यक्त किया कि प्रार्थी के पास ड्राइवरी का लाइसेंस है और विवाहित अवधि में उसे खल्लासी का ही वेतन दिया गया। प्रार्थी नेतराम के इस शपथ पत्र के कथन का प्रतिवाद किसी साक्ष्य से नहीं होता। रेलवे की ओर से कोई न्यायमात्र भी साक्ष्य पेश नहीं हुई है। नेतराम की जिरह से

भी ऐसा कोई तथ्य जाहिर नहीं हुआ है जिससे कि सन् 1977 से 1980 तक उसके द्वारा ड्राइवर का कार्य करना किसी प्रकार गमत प्रतीत होता हो। इस प्रकार प्रार्थी नेतराम की साक्ष्य में निश्चित तौर पर प्रमाणित हो जाता है कि उसने अप्रार्थी रेलवे पक्षधकों की जीप सं. एम.पी.जी. 7110 पर सन् 1977 से 1980 तक ड्राइवर का कार्य किया तो वह 8110 पर सन् 1977 से 1980 तक ड्राइवर का कार्य किया तो वह इस प्रकार कार्य करने के कारण उसी पद का आफिसियेटिंग अलाउन्स पाने का अधिकारी पाया जाता है और इस प्रकार दिनांक 7-7-77 से 19-4-1980 तक जबकि उसने जीप पर ड्राइवर का कार्य किया और इस पद का वेतन मांगा वह रेलवे प्रशासन द्वारा नहीं दिया गया तो ऐसा कथने में रेलवे प्रशासन पश्चिम रेलवे अजमेर महान उक्त अधिकारीगत न्याय-मांचित नहीं थे, अतः अवाई प्रार्थी युनियन के पक्ष में इस प्रकार पारित किया जाता है कि—

यह कि रेलवे प्रवक्ता पश्चिम रेलवे, अजमेर श्री नेतराम पुत्र मन्साराम को जिन्होंने दिनांक 7-7-1977 से 19-4-80 तक जीप के ड्राइवर के तौर पर काम किया और इस अवधि का आफिसियेटिंग अलाउन्स मांगा जो नहीं दिया, ऐसा करने में उनका कार्यालय आदेश न्यायसंगत नहीं था, अतः श्री नेतराम पुत्र मन्साराम दिनांक 7-7-1977 से 19-4-80 तक जीप ड्राइवर के वेतनमान का आफिसियेटिंग अलाउन्स पाने का अधिकारी है। इस अवधि में, जो उसे खल्लासी पद का वेतन दिया गया, उसे कम करते हुए व जीप ड्राइवर के पद का मिलने वाला आफिसियेटिंग अलाउन्स पाने का अधिकारी है।

अतः इस पत्रावली की प्रतिलिपि केन्द्रीय सरकार को वही प्रकणनार्थ अस्तसंगत धारा 17(1) औद्योगिक विवाद अधिनियम 1947, भेजा जावे।

प्रमाण सिंह यादव, न्यायाधीश

[स. एल 41012/28/84-डी. II (बी)]

का.आ. 1338—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वा. उन्सू० आई. लुहारे उ.रे. बीकानेर के पञ्चमाल से सम्बद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निरिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचमाल को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1338.—In pursuance of Section 17 of Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of P.W.I. Luhare, Northern Railway, Bikaner and their workmen, which was received by the Central Government on the 16-5-89

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण जयपुर

केस नं. सी.आई.टी. 12/87

भारत सरकार, श्रम मंत्रालय नई दिल्ली की अधि-
युक्ता संस्था एन. 41012/4/86 डी.-II (बी)
दिनांक 18-2-87

रेलवे केंद्रस्थ वेतन युनियन, जयपुर श्री अरविन्द्रसिंह
उपाध्यक्ष/कर्मचारी श्री मंगलराम पुत्र श्री कन्हैया श्याम
प्रार्थी पक्ष

बनाम

1. मण्डल कार्मिक अधिकारी, उत्तर रेलवे, बीकानेर
2. स्टाई रेल पक्ष निरीक्षक, मीरन रेलवे, लुहारे।

अप्रार्थी पत्र

उपस्थिति

श्रीमती स्वप्नार्थी श्री प्रताप सिंह यादव, आर.एस. जे. एस.

प्रार्थी युनियन की ओर से :

श्री भरत सिंह

अप्रार्थी रेलवे की ओर से :

श्री धने सिंह

दिनांक अवार्ड :

30-12-88

अग्रार्थ

भारत सरकार के इस मंत्रालय के ईम्फ श्रमिकों के निर्माणविषय विवाद के अन्तर्गत धारा 10(1)डी. औद्योगिक अधिनियम, 1947 जिसे नवम्बर 1947 में अधिनियम किया जाया जाने वाला अधिनियम 1947 अधिनियम की प्रेरित किया है।

"Whether the action of the management of P.W.J. Lohare (Northern Railway Bikaner) in terminating the services of Shri Mangtaram w.e.f. 15-4-84 is legal and justified? If not, to what relief the workman is entitled to and from what date?"

इस निर्णयन के प्राप्त होने पर इसे पंजीकृत किया गया व पत्रकारान की नोटिस अग्रे पंजीकृत डाक सेजे गए।

प्रार्थी श्रमिक मंगतराम ने युनियन के माध्यम से अपना स्टेटमेंट आफ क्लेम निम्न प्रकार प्रस्तुत किया। यह की प्रार्थी मंगतराम ने दिनांक 26-6-83 से 14-9-83 तक मुख्य गांधी परीक्षा बीकानेर की देखरेख में वनीर केजुअल लेबर (पानीवाला) के उत्तर रेलवे बीकानेर मण्डल में कार्य किया। आगे व्यक्त किया कि श्री मंगतराम ने दिनांक 23-9-83 से 14-4-84 तक रेल पथ निरीक्षक लुहार की देख रेख में हजालू व रामपुरा बरी के बीच केजुअल लेबर रंगसेन के पद पर कार्य किया। आगे यह भी व्यक्त किया कि मंगतराम एक कलैण्डर वर्ष में 240 दिन से अधिक काम करने के आधार पर लगातार काम करने वाला औद्योगिक कर्मचारी हो गया। यह भी व्यक्त किया कि प्रार्थी श्रमिक का नियोजक मण्डल कार्मिक अधिकारी नोर्टन रेलवे बीकानेर है। आगे यह आरोप लगाया कि प्रार्थी श्रमिक की सेवा रेल पथ निरीक्षक लुहार ने सरासर गलत, अनुचित व अनियमित ढंग से समाप्त कर दी जिस कारण से कर्मचारी व नियोजक के बीच औद्योगिक विवाद उत्पन्न हो गया। प्रार्थी श्रमिक ने विवाद युनियन के माध्यम से चलाया परन्तु समक्षता अधिकारी ने असफल वार्ता रिपोर्ट दे पेश की जिसके फलस्वरूप विवाद इस न्यायाधिकरण को पेश किया। अवैध सेवा समाप्ति के संबंध में निम्नार्थ कि श्रमिक को हटाने में पूर्व या उत समय एक माह का नोटिस अवकाश नोटिस वेतन नहीं दिया गया। पहले आगे पीछे जाए के मित्रों को पालन नहीं किया गया। श्रमिक जैसे कर्मचारियों की वरीष्ठता सूची घोषित नहीं की। भारत सरकार को निर्धारित फार्म पर सूचना नहीं दी। अन्त में प्रार्थना की कि प्रार्थी को सेवा समाप्ति से पूर्ववत् पद पर अहवाल किया जाये व सेवा में हटाने के समय से बहाल करने के समय तक का वेतन दिनाया जावे।

मण्डल कार्मिक अधिकारी उत्तर रेलवे ने स्टेटमेंट आफ क्लेम का उत्तर निम्न प्रकार पेश किया। यह कि प्रार्थी श्रमिक ने नौकरी से हटने में पूर्व एक कलैण्डर वर्ष में 240 दिन या इससे अधिक कार्य नहीं किया। आगे यह भी एमराज किया कि प्रार्थी कर्मचारी मंगतराम का नियोजक सहायक अभियन्ता, उत्तर रेलवे सादुलपुर है न कि मण्डल कार्मिक अधिकारी। आगे यह भी एमराज किया कि प्रार्थी कर्मचारी रेल का निरीक्षक लुहार ने मण्डल कार्मिक अधिकारी बीकानेर के अधीन औद्योगिकीय पानी वाला के पद पर कार्य करने हेतु नौकरी छोड़ कर चला गया। इसके पश्चात् जब कटे वाला यानि वेस्टिंग मैन के पद के लिए चयन प्रक्रिया मण्डल कार्मिक अधिकारी द्वारा अपनाई गई तो मंगतराम प्रार्थी को अयोग्य घोषित कर दिया गया क्योंकि इस कर्मचारी की जन्म

तिथि प्रमाणित व इस तिथि संबंधी विवाद था। कर्मचारी मंगतराम का अन्तरण मंदिर होने के कारण रेल प्रशासन के प्रति विश्वास भंग हो गया। अब उसकी सेवा दिनांक 15-11-84 में नही तो पुराना पद पर दी गई। आगे यह व्यक्त किया कि श्री मंगतराम ने पत्रिका का दिनांक 21-9-84 से 15-11-84 तक बीकानेर केजुअल लेबर [400] प्राप्ति के लिए ही रेल पथ निरीक्षण द्वार के अन्तर्गत कार्य किया है। उत यह एमराज किया कि प्रार्थी मंगतराम का केस प्रा. 2(प्र.सो.) के क्लेम (बी.टी.) के तहत आता है। इस कारण से उसकी सेवा समाप्ति अयोग्य छुट्टी की परिभाषा में नहीं आती। प्रार्थी को सेवा समाप्ति में पूर्व एक माह का नोटिस अवकाश छुट्टी का मूआवजा दिवने का प्राव नहीं उठता है और न ही उसके केस में पहले आगे पीछे जाए का मित्रों की वादु होता है। और जब उसकी छुट्टी नहीं की गई तो भारत सरकार को निर्धारित फार्म पर इस छुट्टी वादु सूचना देने का पत्र ही नहीं उठता। अब प्रार्थना की कि प्रार्थी का क्लेम निरस्त किया जाये। मंगतराम प्रार्थी मंगतराम की ओर से उनके अधिकृत प्रतिनिधि श्री भरत सिंह ने दिनांक 19-11-87 को उत्तर रेलवे के संबंध में रीजवाइण्डर पेश किया।

श्री मंगतराम प्रार्थी ने उसके स्टेटमेंट आफ क्लेम की समग्रुटी में अपना शपथ पत्र पेश किया। मंगतराम के शपथ पत्र पर न्यायाधिकरण द्वारा स्थापित किया। रेलवे के योग्य अधिकृत वने विर ने मंगतराम से रीजवाइण्डर किया। रेलवे की ओर से श्री मोहसिन अली कुरेशी ने उसका शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा स्थापित किया गया। प्रार्थी के अधिकृत प्रतिनिधि श्री भरत सिंह ने गवाह मोहसिन अली कुरेशी से जिरह की। मैंने बहम योग्य अधिकृत प्रतिनिधि प्रार्थी व अधि-धर रेलवे की ओर से। पत्रकारों का स्थान पूर्वक अवलोकन किया है।

न्यायालय के समक्ष विचारणाया प्रमाण यह है कि आया गो. हजालू. आगे लुहार उत्तर रेलवे बीकानेर का प्रार्थी श्रमिक मंगतराम को दिनांक 15-4-84 से सेवा से हटाने का क्लेम और न्याय संगत था और यदि नहीं तो प्रार्थी श्रमिक किस राहत को प्राप्त करने का अधिकारी है। उपरोक्त प्रश्न को निश्चित करने के लिए प्रार्थी मंगतराम की माध्य की सर्वप्रथम सीर करना है श्री मंगतराम श्रमिक ने उसके शपथ पत्र में यह व्यक्त किया कि उसने दिनांक 26-6-83 से 14-9-83 तक मुख्य गांधी परीक्षा बीकानेर की देख रेख में केजुअल लेबर पानीवाला के पद पर उत्तर रेलवे बीकानेर मण्डल में काम किया। आगे व्यक्त किया कि शपथ पत्र प्रस्तुत करने में दिनांक 23-9-83 से 14-4-84 तक रेल पथ निरीक्षक लुहार की देख रेख में हजालू और रामपुरा बरी के बीच केजुअल लेबर रंगसेन के पद पर राजस्थान क्षेत्र में कार्य किया और शपथ पत्र एक कलैण्डर वर्ष में 240 दिन से अधिक काम करने के आधार पर लगातार काम करने वाला औद्योगिक कर्मचारी हो गया। आगे शपथ पत्र पर व्यक्त किया कि प्रार्थी का नियोजक मण्डल कार्मिक अधिकारी उत्तर रेलवे बीकानेर है। आगे यह भी व्यक्त किया कि उनकी सेवा दिनांक 15-4-84 से रेल पथ निरीक्षक लुहार ने शपथ एवं अनुचित प्रकारण व अनियमित तथा अनधिकृत रूप में समाप्त की। आगे शपथ पूर्व यह भी कहा कि उनकी सेवा समाप्ति करते समय शपथ ग्रहण करने को एक माह का नोटिस अवकाश नोटिस वेतन नहीं दिया गया एवं उमे छुट्टी का मूआवजा नहीं दिया गया न ही पहले आगे पीछे जाए के मित्रों का पालन किया गया। और न ही प्रार्थी श्रमिक जैसे कर्मचारी का वरीष्ठता सूचा घोषित की गई। यह भी आरोप लगाया कि भारत सरकार को निर्धारित फार्म में इस छुट्टी बाधात सूचना नहीं दी गई न ही प्रार्थी को कोई चार्ज शीट दी गई न कोई विभागीय जांच की गई।

इसके महेसुकाबिल श्री मोहसिन अली कुरेशी वरिष्ठ लिपिक कार्मिक शाखा मंडल रेल प्रबंधक, कार्यालय उत्तर रेलवे बीकानेर ने अपना शपथ पत्र पेश किया जिन्होंने यह व्यक्त किया कि प्रार्थी मंगतराम को दिनांक 15-4-84 को नौकरी से नहीं हटाया गया था और इस संबंध में यह भी कहा कि प्रार्थी ने अंतिम तोर पर दिनांक 23-9-84 से 15-11-84 तक पी. डब्ल्यू. आई. हमार के अंतर्गत कार्य किया। अपने बयान में यह भी व्यक्त किया कि प्रार्थी मंगतराम ने नौकरी से हटाने से पूर्व एक कलैण्डर वर्ष में 240

दिन या इसमें अधिकतम अधिक के लिए कार्य नहीं किया। आगे अपने शपथ पत्र में यह लिखा कि प्रार्थी मंगतूराम ने 7-8-78 से लगाकर 6-7-79 तक शपथ पत्र में अंकित मित्र जिस विधियों के मध्य एक पी. डब्ल्यू. आई. रत्नगड के हाँ काम किया। फिर दिनांक 21-7-79 से पी. डब्ल्यू. आई. रत्नगड के यहाँ 9-10-79 तक एवं सी. बी. ए. एम्स आर. मुरगड अंकन के अधीन 7-5-80 से 30-9-84 तक सी. टी. एम्स आर. बीकानेर के अधीन कार्य किया। आगे लिखा कि दिनांक 26-6-83 से 14-9-83 तक बतौर पानीवाला के कार्य किया और वह दिनांक 23-9-84 से 15-11-84 तक पानीवाले के पद पर बतौर केजुप्रल लेबर पी. डब्ल्यू. आई. हिसार के अधीन कार्य किया। आगे यह लिखा कि प्रार्थी का यह कथन कि उसे अप्रार्थी द्वारा 15-4-84 को नौकरी से हटा दिया गलत है। और आगे यह जाहिर किया कि अप्रार्थी रेल विभाग द्वारा 25-4-84, 25-5-84, 15-4-84 व 2-6-84 को पत्र प्रदर्श एक्जीडिट एम. 3, एम. 5, एम. 6, एम. 7, जारी हुए। प्रार्थी की माध्य से यह बखूबी जाहिर हुआ है कि प्रार्थी श्रमिक मंगतूराम ने दिनांक 26-6-83 से 14-9-83 तक मुख्य गाड़ी परीक्षक बीकानेर की देखरेख में बतौर केजुप्रल लेबर पानीवाले के कार्य किया और दिनांक 23-9-83 से 14-4-84 तक रेल पथ निरीक्षक लुहार की देखरेख में हर्पापू और रामपुरा बेरी के बीच गैंगमैन के पद पर कार्य किया। यहाँ विपक्षी रेलवे के गवाह की ओर से यह प्ती ली गई है कि 15-4-84 को प्रार्थी की सेवा समाप्त नहीं की गई। ऐसी सूत्र में इस विवाहित बिंदु को भी गौर करने की आवश्यकता है कि आया 15-4-84 को प्रार्थी के सेवा समाप्त न करने की डिफेंस प्ती का क्या प्रभाव होगा। मौजूदा विवाद में मंगतूराम की सेवा समाप्ति की तिथि 15-4-84 अंकित की गई है। ग्रेटमेंट आफ क्लेम में प्रार्थी ने उसकी सेवा समाप्ति की तिथि 15-4-84 लिखी है। प्रार्थी मंगतूराम की ओर से जो रिजवाइंडर पेश किया गया है उसमें प्रार्थी की सेवा अनुवर्त एवं निराधार 15-4-84 से गलत होर पर साभाप्य करना तहरीर किया है। यदि 15-4-84 को प्रार्थी श्रमिक की सेवा समाप्त नहीं की गई थी तो अप्रार्थी रेलवे की ओर से 15-4-84 को सेवा समाप्ति किये जाने का एतर्गज किया जाना आवश्यक था। मगर रेलवे की ओर से आपसी समझौता के दौरान यह एतर्गज नहीं किया गया और इस समय 15-4-84 को प्रार्थी श्रमिक की सेवा समाप्ति होने को जो कैंलेंडर किया गया है यानि चुनौती दी गई है, ऐसा करने के लिए प्रार्थी रेलवे एस्टोड है। यहाँ प्रार्थी स्वयं का बयान गलत मानने का कोई कारण नहीं है और 15-4-84 को प्रार्थी मंगतूराम की सेवा समाप्ति की गई है यह उसकी माध्य से भी प्रमाणित हुआ है और समझौता कार्यवाही के आधार पर 15-4-84 को सेवा समाप्ति किये जाने का विवाद उत्पन्न हुआ, वह सही ही रेफरेंस में लिखा गया है। प्रार्थी के बयान ने यह बखूबी प्रमाणित है कि प्रार्थी मंगतूराम ने 26-6-83 से 14-9-83 तक मुख्य गाड़ी परीक्षक बीकानेर की देखरेख में बतौर केजुप्रल लेबर पानीवाला के रूप में उत्तर रेलवे बीकानेर मंडल में कार्य किया। 20-3-83 से 14-9-83 तक 81 दिन बतने हैं। तत्पश्चात् प्रार्थी मंगतूराम ने दिनांक 23-9-83 से 14-4-84 तक रेल पथ निरीक्षक लुहार की देखरेख में हर्पापू और रामपुरा बेरी के स्टेशनों की बीच केजुप्रल लेबर गैंगमैन के पद पर बीकानेर मंडल में कार्य किया। इस प्रकार 23-9-83 से 14-4-84 तक कुल 205 दिन कार्य करना प्रमाणित होता है। 14-9-84 से एक वर्ष पीछे की अवधि में उपरोक्त की जोड़ने से कुल 266 दिन एक कैलेंडर वर्ष में कार्य करना प्रमाणित हो जाता है और प्रार्थी की माध्य से प्रार्थी की सेवा समाप्ति से पूर्व एक कैलेंडर वर्ष में 240 दिन से अधिक निरंतर कार्य करने वाला प्रमाणित होने से यह औद्योगिक कर्मकार हो गया है। अब यह देखना है कि आया प्रार्थी मंगतूराम की सेवा समाप्ति छटनी की परिभाषा में आती है या नहीं। इस संबंध में योग्य अधिकृत प्रतिनिधि प्रार्थी ने बहस की कि जब उत्तर रेलवे के बीकानेर मंडल में प्रार्थी श्रमिक को निरंतर कार्य करते हुए 240 दिन पूरे हो गए थे तो उसको हटाने से पूर्व धारा 25 एफ. अधिनियम की पूर्ती किया जाना आवश्यक था। यह भी बहस की कि इस प्रकार प्रार्थी श्रमिक की सेवा समाप्ति से पूर्व कोई वरिष्ठता कुषि प्रकाशित नहीं की गई और न ही कोई छटनी का मुद्दाया दिया गया। इसलिए प्रार्थी श्रमिक की छटनी अवैध थी। इस संबंध में रेलवे के अधि-क्षता ने यह बहस की कि प्रार्थी श्रमिक ने उसके स्कूल प्रमाण पत्र में गलत

अत्म तिथि लिखी हुई थी जिसके संबंध में रेलवे ने जांच भी की और जांच के पश्चात् ही उसकी सेवा समाप्त की। इस संबंध में रेलवे के गवाह की मौखिक अती कुरेशी के शपथ पत्र की जगह कायम और है। तबमें उसके प्राप्तिपरीक्षण की पहली पंक्ति में ही यह स्वीकार किया है कि मंगतूराम को कोई आरोप पत्र नहीं दिया गया था। मंगतूराम के खिलाफ कोई महकमा जांच नोटिस देकर नहीं की न ही उसको उसका स्पष्टीकरण देने के लिए कोई अवसर दिया हमने स्पष्ट है कि अप्रार्थी रेलवे की ओर से कोई अनुमाननात्मक जांच प्रार्थी के बारे में उसकी हिलचल से नहीं की। यदि कोई प्रारंभिक जांच प्रार्थी श्रमिक के पीछे से की भी तो कोई उसका प्रभाव प्रार्थी के केंग की गुणावगुण पर नहीं पड़ता है। इस संबंध में ए. आई. आर. 1986 सुप्रीम कोर्ट 1790 थी राजेंद्र कौर बनाम स्टेट ऑफ पंजाब पर अवलंब किया जाता है। जब भी किसी कर्मचारी के खिलाफ कोई स्टिप्ता लगता है तो उसे उसका बहाना करने के लिए अवसर दिया जाना आवश्यक होता है। यैने भी 120 दिन कार्य करने के पश्चात् यदि किसी की सेवा समाप्त की जाती है तो भारतीय संविधान के अनुच्छेद 311(2) के प्रावधान लागू हो जाते हैं और इस प्रकार उसे कोई अवसर स्पष्टीकरण न देने के कारण उसकी सेवा समाप्ति अवैध हो जाती है। ए. आई. आर. 1986 सुप्रीम कोर्ट पृष्ठ 1680 भी यहाँ कायम होर है। 1975 एल. आई. सी. के 1556 में यह व्यवस्था प्रतिपादित की गई है कि जहाँ धारा 25 एफ अधिनियम के प्रावधान की परिपालना नहीं होती है वहाँ समाप्ति की गई सेवा भी लगातार चालू रहता ही मानी जावेगी।

चूंकि मंडल कार्मिक अधिकारी बीकानेर प्रार्थी का नियोजक था ऐसी सूत्र में पी. डब्ल्यू. आई. लुहार या पथ निरीक्षक लुहार उसकी सेवा समाप्त करने में अक्षम नहीं था और बिना जांच किए बिना नोटिस दिए बिना मुद्दाया दिए औद्योगिक कर्मकार की सेवा समाप्ति की गई वह सेवा समाप्ति अवैध छटनी की तारीख में आती है। इस संबंध में ए. आई. आर. 1988 सुप्रीम कोर्ट पृष्ठ 390 राजकुमार बनाम युनियन आफ हंडिया पैरा 7 पर अवलंब किया जाता है और प्रार्थी की अवैध छटनी होने से उसकी सेवा समाप्ति की तिथि से पूर्ववत पद बयेंत पर बहाना होने का अधिकारी पाया जाता है। केवल जिस दौरान में उसे हिसार बी. डब्ल्यू. आई. के यहाँ नियोजित रखा गया है उस अवधि के दौरान जो बयेंत उसे मिला वह मिलने वाले एरियर्स में से बाध्य किया जाएगा।

अवार्ड

यह कि पी. डब्ल्यू. आई. लुहार उत्तर रेलवे बीकानेर के द्वारा मंगतूराम श्रमिक की सेवा समाप्ति जो 15-4-84 को की गई वह अवैध एवं अनुचित थी। प्रार्थी सेवा समाप्ति तिथि से पूर्ववत पद बयेंत पर बहाना होने का अधिकारी है। प्रार्थी श्रमिक 23-9-84 से 15-11-84 तक पानीवाला के पद पर बतौर केजुप्रल लेबर के. पी. डब्ल्यू. आई. हिसार के अधीन कार्य किया इस दौरान की वेतन व पानी वाले ऐरियर्स से मिसी कराने का अधिकारी होगा। प्रार्थी की सेवा 15-11-84 से बहाना किये जाने की तिथि तक निरंतर मानी जावेगी। इस दौरान में जो भी लाभ प्रार्थी श्रमिक को अंकित हुए थे प्राप्त करने का अधिकारी होगा। अवार्ड की प्रतिनिधि अंतर्गत धारा 17(1) औद्योगिक विवाद अधिनियम केन्द्रीय सरकार वास्ते प्रकाश-नार्थ भेजी जावे।

प्रताप सिंह यादव, स्यायाधीन,

[नं. एन-41012/4/84-डी II (बी)]

का आ. 1339.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में, केन्द्रीय सरकार दो आर. एम. पंचिम रेलवे, अजमेर के प्रबंधन से संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1339—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jaipur as shown in the Annexure, in the indus-

trial dispute between the employers in relation to the management of Western Railway, Ajmer and their workmen, which was received by the Central Government on the 16-5-89.

परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. 26/2/85

सध्य

श्री नाहर सिंह गैंगमैन पश्चिम रेलवे कर्मचारी परिषद, 8 सोनी धमशाला, पृथ्वीराज मार्ग, अजमेर।

एवम्

1. महाप्रबन्धक पश्चिम रेलवे चर्च गेट, बम्बई।
2. मण्डल रेल प्रबन्धक पश्चिम रेलवे, अजमेर।
3. मण्डल कामिक अधिकारी पश्चिम रेलवे, अजमेर।

रेफरेन्स : --प्रत्यर्गत धारा 10 (1) (डी) औद्योगिक विवाद अधिनियम, 1947,

उपस्थिति : --1. श्री धार.सी. नारंग प्रार्थी युनियन की ओर से उपस्थित।

2. श्री बी.एम. साधु अधिवक्ता पश्चिम रेलवे उपस्थित।

3. दिनांक प्रवार्ड : --29-3-89

अवार्ड

भारत सरकार के श्रम मंत्रालय के डेस्क अधिकारी ने उनकी आज्ञा संख्या एल-41011 (16)/84-डी 11 (बी) दिनांक 20-4-85 के द्वारा प्रत्यर्गत धारा 10 (1) (डी) औद्योगिक विवाद अधिनियम 1947, में निम्न विवाद इस न्यायाधिकरण को वास्तु अधिनियमप्रार्थ प्रस्तुत किया है।

"3-Whether the action of the DRM WR, Ajmer and DPO, WR, Ajmer in terminating the services of Shri Nahar Singh after his medical decategorisation and not offering him the alternative employment is justified and legal? If not, to what relief he is entitled?"

उपरोक्त रेफरेन्स के प्राप्ति के बाद रेफरेन्स को इस न्यायाधिकरण, में पंजीकृत किया गया। इस रेफरेन्स के द्वारा श्री एल. बी. पाल ब्लर्क, श्री बी.एल. गोयल ब्लर्क की मेडिकली बी. डेटेराइज होने के पश्चात् द्वारा सर्विस में न लगाने के सम्बन्ध में श्री बी.एल. गोयल की वरिष्ठता न दिये जाने के सम्बन्ध में श्री नाहर सिंह की मेडिकली फल हो जाने के कारण उसकी सेवा समाप्ती के सम्बन्ध में रेफरेन्स उत्पन्न हुआ था। इस न्यायाधिकरण के आदेश दिनांक 20-5-87 के द्वारा श्री बी.एल. गोयल द्वारा क्लेम पेश न करने से उसका क्लेम पेश करने का अधिकार समाप्त किया गया और श्री एल. बी. पाल और श्री नाहर सिंह के क्लेम की बाबत पृथक-2 पत्रावलि बनाये जाने का आदेश दिया। इस प्रकार श्री एल. बी. पाल की पत्रावली 26/85 थी जो फैल हो चुकी है। श्री नाहर सिंह के क्लेम के सम्बन्ध में पत्रावली संख्या 26/1985 बायम की गई जो जेरे-गौर है।

श्री नाहर सिंह के सम्बन्ध स्टेट मेन्ट आफ क्लेम संयुक्त मण्डल संश्री अजमेर, ने निम्न प्रकार से पेश किया।

यह कि श्री नाहर सिंह पुत्र श्री भोसा सिंह गैंगमैन पी. डब्ल्यू. आई. अजमेर के अधीन दिनांक 21-7-78 से कार्यरत हैं। नाहर सिंह को दिनांक 21-11-79 को टेम्पेरी स्टेट्स का कार्य प्रदान किया गया और दिनांक 27-7-76 से 3-11-82 तक श्री नाहर सिंह कार्यरत रहा परन्तु अचानक उसकी आंख में चोट लग जाने के कारण वह जवाहर लाल नेहरू अस्पताल में गया। इलाज कराने के पश्चात् वह कार्य पर

आया तो ए.ई.एन. डाक्टरों परीक्षा हेतु रेलवे जगहात भेजा। प्रार्थी नाहर सिंह को रेलवे चिकित्सालय ने बी-1 की बजाय सी-1 से डाक्टरों परीक्षा में पास किया। सी-1 में पास करने के पश्चात् प्रार्थी को इयूटी पर 30-12-82 में नहीं लिया। आगे यह भी एतराज दिया। प्रार्थी नाहर सिंह के सी-1 उत्तीर्ण होने के पश्चात् चिकित्सा वर्गीकृत मत कर कार्य पर सेवा चाहिये था और ऐसा न कर रेलवे प्रशासन ने ए.आई. ई.एम. क अध्याय 26 का उल्लंघन किया। आगे यह भी एतराज दिया कि श्री नाहर सिंह को नौकरी से निकालने का कोई नोटिस दिया नहीं छंटनी का मुआवजा दिया, इस प्रकार रेलवे प्रशासन ने औद्योगिक विवाद अधिनियम धारा 25 एफ का उल्लंघन किया। अतः प्रार्थना कि प्रार्थी नाहर सिंह को पुनः नौकरी पर लिया जावे और उसे 30-12-82 से जब तक केस का फैसला न हो इयूटी पर माना जावे, एवम् 30-12-82 से केस का निर्णय होने तक सभी वेतन अलाउन्स वरिष्ठता एवम् अन्य सुविधाएं प्रदान की जायें।

मंडल कामिक अधिकारी पश्चिम रेलवे अजमेर ने 9-12-85 को नाहर सिंह के सम्बन्ध में स्टेटमेन्ट आफ क्लेम का निम्न उत्तर प्रस्तुत किया। नाहर सिंह के सम्बन्ध में यह व्यक्त किया कि प्रार्थी नाहर सिंह को दिनांक 21-7-78 से नियमित श्रमिक यानी केवल लेबर के रूप में मवाया गया था न कि गैंगमैन के पद पर आगे जाहिर किया कि प्रार्थी को अस्थाई स्तर दिनांक 21-11-79 से प्रदान किया गया। इस बारे में यह व्यक्त किया कि अस्थाई स्तर उन श्रमिक को प्रदान किया जाता जो निम्नतर 6 माह तक कार्य कर लेते हैं किन्तु हमका यह अर्थ नहीं है कि प्रार्थी नियमित कर्मचारी बन गया है।

आगे व्यक्त किया गैंगमैन के पद के लिए निर्धारित मेडिकल स्तर बी-1 है। जब मेडिकल प्रांच के लिए भेजा गया तो प्रार्थी बी-1 केटेगरी में अयोग्य पाया गया तथा उसे सी-1 मेडिकल स्तर के पदों के लिए फिट पाया गया। किन्तु प्रार्थी न तो नियमित रेल कर्मचारी था न ही उसने आकस्मिक श्रमिक के रूप में निरन्तर 6 वर्ष तक कार्य किया। अतः प्रार्थी वह वैकल्पिक पद पाने का अधिकारी नहीं था इस सम्बन्ध में रेलवे बोर्ड के पत्र दिनांक 10-5-73 का हवाला देते हुए एवम् जतरल मैनेजर बम्बई के पत्र दिनांक 7-8-73 का हवाला देते हुए ये निष्ठा गया जो नियम बताये हैं उनके अनुसार प्रार्थी वैकल्पिक पद पाने का अधिकारी नहीं है इसे नकारा आई.आर.ई.एम. के अध्याय 26 का उल्लंघन किया गया हो अतः में व्यक्त किया। प्रार्थी को रेल सेवा की छंटनी का नोटिस पत्र संख्या ई.आई-615/6 दिनांक 25-5-84 मय नोटिस पे 515 रुपये 50 पैसे एवम् छंटनी का मुआवजा 765.50 पैसे कुल रकम 1200.60 पैसे दिनांक 25-5-84 को दे दिये गये जो प्रार्थी ने स्वीकार कर लिये हैं। अतः में प्रार्थना कि नाहर सिंह का कोई भी क्लेम नहीं बनता है।

प्रार्थी नाहर सिंह ने अपने क्लेम की सम्पुष्टी में स्वयं का शपथ-पत्र पेश किया, जिसे न्यायालय द्वारा सत्यापित किया गया। रेलवे के वकील ने श्री नाहर सिंह से जिरह की। रेलवे की ओर से बाबजूद कई बार कोम्ट पर अवसर दिये जाने के कोई माध्य पेश नहीं की यह रेलवे की माध्य वन्द की गई।

मैंने बहुत योग्य अधिकृत प्रतिनिधि प्रार्थी युनियन एवम् अधिवक्ता रेलवे मुनी हैं। पत्रावली का ध्यान पूर्वक अवलोकन किया है। न्याया-धिकरण के समक्ष विचारणीय प्रश्न यह है कि आया प्रार्थी नाहर सिंह के चिकित्सा वर्गीकृत घोषित किये जाने के पश्चात भी उसे इसी पद पर नियोजन न दिया जाकर उसकी सेवा समाप्ती करना वैध एवम् अनुचित था। उपरोक्त प्रश्न को निर्णयित करने के लिए हमारे समक्ष प्रार्थी श्रमिक की माध्य की ही माध्य हैं। प्रार्थी नाहर सिंह ने उसके शपथ पूर्व बयान में यह व्यक्त किया है कि उसे बी.डब्ल्यू.आई. अजमेर के यहाँ दिनांक 21-7-78 से नियोजित किया गया, एवम् रेल प्रशासन ने 21-11-79 को अस्थाई दर्जा दिया गया। तत्पश्चात 21-11-78 से 31-11-82 तक वह कार्यरत रहा। आगे उसने व्यक्त किया उसकी आंख में चोट लग गयी थी। इलाज कराने हेतु वह 29-12-82 तक अस्पताल में रहा और जब वह 30-12-82 को इयूटी पर उसका

सर्टिफिकेट लेकर गया तो उसे ए.ई.एन. के रेलवे अस्पताल का पत्र देकर डाक्टरों की परीक्षा के लिए भेजा। रेलवे डाक्टर ने सी-1 के स्थान पर सी-1 की डाक्टरों की परीक्षा में पास किया। परन्तु उसे 30-12-82 सी-1 में पास होने पर कार्य पर नहीं लिया और यह कह कर भेज दिया अभी उसके बारे में कोई फैसला नहीं हुआ है। कोई फैसला होगा तो सूचित कर दिया जाएगा। बाद में बार-बार पूछने पर उसे बताया गया उसे नौकरी से निकाल दिया है। जिरह में उसने ध्यान किया वह 1978 में बारहमासी में ही काम कर रहा था। तभी से वह पक्का है और पक्का कर्मचारी के रूप में काम कर रहा था।

प्राचीं नाहर सिंह स्वयं को साध्य में वह बख्शी प्रमाणित होता है कि वह गैरमैन पद पर दिनांक 21-7-78 से लगा था और उस 21-11-79 को रेलवे प्रशासन ने अस्थाई दर्जा दिया। रेलवे में कार्यरत होने के दौरान उसको आश्रम में भेज दिया गया जिसके कारण वह 29-12-82 तक जवाहर लाल नेहरू अस्पताल अखनौर में अंतरा ईलाज रहा। दिनांक 30-12-82 को जब वह अपने कार्य पर आया तो ए.ई.एन. ने उसे डाक्टरों की परीक्षा के लिए रेलवे अस्पताल में भेजा, जहाँ उसे केटेगिरी सी-1 की बजाय केटेगिरी सी-1 में पास किया और उसके पश्चात् उसे वापस पर नहीं लिया गया। रेलवे प्रशासन की ओर से केवल इस प्रकार का अन्याय पेश हुआ था कि डाक्टरों की परीक्षा में जब प्राचीं श्रमिक सी-1 स्तर के पद के लिए फिट पाया गया था उस समय न तो वह नियमित रेलवे कर्मचारी था, न उसको निरन्तर 6 वर्षों का सेवा था। प्राचीं बैकल्पिक पद पाने का अधिकारी नहीं था।

चूँकि प्राचीं नाहर सिंह साध्य से उसको सेवा समाप्ती 13-12-82 को की जाना प्रमाणित होता है और सेवा समाप्ति से पूर्व एक कनेक्टर वर्ष में 240 दिन से अधिक निरन्तर अपने रेलवे में कार्य किया था और वह एक कनेक्टर वर्ष में 240 दिन से अधिक निरन्तर कार्य करने वाला औद्योगिक कर्मकार होता गया था। ऐसी स्थिति में प्राचीं नाहर सिंह को सेवा समाप्ति से पूर्व धारा 25 एफ औद्योगिक विवाद अधिनियम 1947 के प्रावधानों की परीक्षा करना किता आवश्यक था। मगर नौजवा केम में धारा 25 एफ अधिनियम को पालना नहीं की गई वह सुनिश्चित हो चुका है। प्राचीं नाहर सिंह को सेवा समाप्ति से पूर्व 240 दिन से अधिक निरन्तर कार्य कर लिया था। सेवा समाप्ति से पूर्व प्राचीं को कोई नॉटिस नहीं दिया गया न ही सेवा समाप्ति करने समय नॉटिस प्रवधि का वेतन व छटनी का मुआवजा दिया, मुआवजा जो दिया वह दिनांक 25-4-84 को काफी समय पश्चात् दिया जो छटनी के दिन दिया जाना आवश्यक था। बाद में दिये गये मुआवजे से कानूनी पूर्ति होता नहीं पाया जाता है इसी प्रकार की गई सेवा समाप्ति इस प्रकरण में अनेक छटनी को परिभाषा में आती है।

यद्यपि श्री.एम. माधुर गोयल अधिवक्ता ने यह बहस की कि मौजूदा प्रकरण में सेवा समाप्ती छटनी नहीं थी क्योंकि प्राचीं श्रमिक बिकल्प परीक्षा में फेल हो गया था और वह स्वयं काम पर नहीं आया था।

साध्य अधिवक्ता को ये दलील मन्ने निस्कार लगती है। यदि प्राचीं श्रमिक केटेगिरी सी-1 की अपेक्षा केटेगिरी सी-1 की मध्य के लिए फिट था तो भी रेलवे प्रशासन का यह दावित्व था उसे सुनिश्चित जोष दो जाती है। जो रेलवे रेलवेगण 2605 इंडियन रेलवे एस्टेब्लिशमेंट के अनुसार दिया जाता आवश्यक था। मगर प्राचीं श्रमिक को आज तक भी बैकल्पिक नौकरी नहीं दी गई। रेलवे एस्टेब्लिशमेंट कोड धूम 1 के नियम 149161 के अनुसार जो अस्थाई कर्मचारी जिन पर को औद्योगिक विवाद अधिनियम 1947, लागू होता है उनका औद्योगिक विवाद अधिनियम के प्रावधान के तहत सेवा समाप्ति से पूर्व नॉटिस दिया जाना अनिवार्य था जो नहीं दिया गया। प्राचीं नाहर सिंह को सेवा समाप्ति धारा 25-एफ के अन्वय में किया जाता पाई जाती है जो अवैध छटनी है। इस अवैध छटनी के कारण प्राचीं सेवा समाप्ति से पूर्व पद व वेतन पर बहाल होने का अधिकारी है और उसके पश्चात् केटेगिरी

सी-1 की जिम्मा पॉस्ट पर रेलवे द्वारा पद स्थापित किया जाना उचित समझा जाता है उसे प्राप्त करने का अधिकारी पाया जाता है।

अतः प्राचीं नाहर सिंह के पक्ष में अवार्ड निम्न प्रकार से जारी किया जाता है। यह कि श्री.आर.एन. वेस्टने रेलवे अखनौर डी.पी.ओ. वेस्टने रेलवे अखनौर द्वारा नाहर सिंह को मेडिकल डी.के.टी.ए. करने के पश्चात् बैकल्पिक नौकरी न दिया जाना उचित एवं वैध नहीं था। प्राचीं को सेवा समाप्ति धारा 25-एफ औद्योगिक विवाद अधिनियम 1947 के अन्वय में को जाना पाई जाती है। प्राचीं नाहर सिंह दिनांक 30-12-82 से उसके पूर्ववत् पद व वेतन पर बहाल होने का अधिकारी है। रेलवे को यह छूट होगी कि वह प्राचीं नाहर सिंह को केटेगिरी सी-1 के अनुसार बैकल्पिक पॉस्ट पद पर नियमानुसार पद स्थापित करें। प्राचीं नाहर सिंह दिनांक 30-12-82 के बाद बैकल्पिक पद का वेतन प्राचीं के हित में बहाली की तारीख तक एरियर्स के रूप में प्राप्त करेगा। प्राचीं पाठ के बेजेश और अनारिम देव से भी लाभ प्राप्त करेगा। प्राचीं को 1280 रुपये का 25-5-84 का नॉटिस अवधि के बर्तन एवं मुआवजे के रूप में दिये गये हैं। रेलवे यह राशि प्राचीं के बर्तन वाले एरियर्स में से काट सकेगा। अवार्ड को प्रतिलिपि अर्पण धारा 17 (3) औद्योगिक विवाद अधिनियम केन्द्रीय सरकार को भेजी जावे।

श्री प्रताप सिंह यादव, न्यायाधीश

[नं. एन-41012/16/84-डी-III (बी)]

का.आ. 1340:--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में, केन्द्रीय सरकार उत्तर रेलवे, श्रीकांतेर के प्रमुखत्व से सम्बद्ध निवासियों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचरट का प्रकाशन करता है, जो केन्द्रीय सरकार को 16-5-89 का प्राप्त हुआ था।

S.O. 1340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway, Bikaner and their workmen, which was received by the Central Government on the 16-5-89.

परिमिट

केन्द्रीय औद्योगिक न्यायाधिकरण, राज., जयपुर

53/84	53/84	53/84	53/84
केम नं. सी.आई.टी.	-----	-----	-----
1	2	3	5

केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली की अधिसूचना संख्या एन० 41011(25)/83-डी. III (बी) दिनांक 13-6-84

1. श्री हरि सिंह

2. श्री राजेन्द्र

3. श्री गुलाम ख़ुल

4. श्री अर्जुन

बनाम

1. महाप्रबन्धक, नॉटिस रेलवे मुख्यालय, बड़ीवा हाउस, नई दिल्ली

2. मण्डल कामिक अधिकारी, नॉटिस रेलवे, श्रीकांतेर

3. मण्डल अधिवक्ता, नॉटिस रेलवे, श्रीकांतेर।

-----प्राचीं पक्ष

4. सहायक अभियन्ता, नार्थन रेलवे, हनुमानगढ़ जंक्शन ।
 5. रेल पथ निरीक्षक, नार्थन रेलवे, हनुमानगढ़ जंक्शन

अप्रार्थी पक्ष

उपस्थिति

माननीय न्यायाधीश श्री प्रताप सिंह यादव

प्रार्थी यूनियन की ओर से : श्री अरविन्द सिंह नैगर
 अप्रार्थी नियोजक की ओर से : श्री लाल चन्द मेहरा
 दिनांक अर्वाइव : 28-2-89

CAMP BIKANER

अर्वाइव

उप सचिव, भारत सरकार, श्रम एवं पुनर्वासि मंत्रालय, नई दिल्ली ने उनकी अधिसूचना संख्या एल. 41011 (25)/83-डी. III(बी) दिनांक 13-6-84 द्वारा निम्न विवाद इस न्यायाधिकरण के अंतर्गत धारा 10 (1) (डी) औद्योगिक विवाद अधिनियम 1947, जिसे तत्पश्चात् अधिनियम लिखा जाएगा वास्ते अधिनियमार्थ भेजा है :

“Whether the termination of services of Shri Hari Singh, S/o Nathising, Shri Rajendra S/o Lakhon Gangotri, Shri Gulam Rasul S/o Sadekhan, Shri Mahavir S/o Teja, Shri Arjun So Jwara casual workers working under the DPO, Northern Railway, Bikaner is justified? If not, to what relief are the concerned workmen entitled?”

बाद प्राप्ति उक्त नियुक्ति इस रेफरेंस को इस न्यायाधिकरण में दिनांक 18-6-84 को पंजीकृत किया गया। बाद पंजीकरण के उभय पक्षकारान को नोटिस जरिए पंजीकृत डाक भेजे गए। प्रार्थी यूनियन की ओर से दिनांक 13-12-84 को श्री अरविन्द सिंह नैगर ने प्रार्थी यूनियन को छोर स्टेटमेंट आफ क्लेम पेश किया जिसकी प्रतिलिपि विपक्षी के अधिकृत प्रतिनिधि श्री मेहरा की दी गई। तत्पश्चात् 25-2-85 को श्री लाल चन्द मेहरा ने अप्रार्थी रेलवे की ओर से अपना अधिकारपत्र प्रस्तुत किया। श्री लालचन्द मेहरा ने दिनांक 4-4-85 को एक प्रार्थना पत्र इस आशय का न्यायाधिकरण के समक्ष प्रस्तुत किया कि इस रेफरेंस में 5 श्रमिकों की सेवागमार्ति का विवाद है, इसलिए प्रत्येक श्रमिक को फ़ाईल अलग से बनाई जावे ताकि सुगमता से जवाब पेश कर प्रकरणों का शीघ्र निपटारा हो सके। यह प्रार्थना पत्र स्वीकार किये जाने पर प्रत्येक श्रमिक के सम्बन्ध में अलग-अलग फ़ाईल बनाई गई और इस प्रकार उन फ़ाइलों का नम्बर 51/1 लगायत 53/5 सन 1984 अंकित किये गए। पाँचों श्रमिकों की ओर से एक सामूहिक निम्न स्टेटमेंट आफ क्लेम पेश किया गया। श्री महावीर पुत्र श्री तेजाराम के सम्बन्ध में पूर्व में तो डिस्पूट अर्वाइव पारित हो चुका है। शेष श्रमिकों के क्लेम के सम्बन्ध में निम्न तथ्य स्टेटमेंट आफ क्लेम से प्रकट हुए हैं :

प्रकरण संख्या 53/1 सन 84 हरि सिंह पुत्र श्री नत्थी सिंह के बारे में है। श्री हरि सिंह के बारे में यह संगत तथ्य जाहिर हुए हैं कि श्री हरि सिंह पुत्र श्री नत्थी सिंह अहीर निवासी हनुमानगढ़ जंक्शन को उत्तर रेलवे की इंजीनियरिंग शाखा में सितम्बर 1979 बतौर दैनिक वेतन भोगी कर्मचारी के रूप में रेल पथ निरीक्षक प्रथम हनुमानगढ़ जंक्शन में नियोजित किया गया था। जिसे बाद में अस्थाई रेल कर्मचारी ऋतुंथ श्रेणी का स्टेट्स एवं वेतनमान रुपये 196-223 दे दिया गया। तत्पश्चात् सहायक अभियन्ता, उत्तर रेलवे, हनुमानगढ़ जंक्शन ने उनके आदेश दिनांक 7-8-81 द्वारा दिनांक 8-8-81 के मध्याह्न पश्चात् सेवा समाप्त कर दी।

प्रकरण संख्या 53/2 सन 84 राजेन्द्र पुत्र श्री साखन संतोषी के क्लेम सम्बन्धी यह तथ्य जाहिर आए हैं कि श्री राजेन्द्र निवासी मुरतगढ़ को दिनांक 15-6-77 को उत्तर रेलवे इंजीनियरिंग शाखा में अस्थाई सेट के पद पर नियोजित किया गया था। तत्पश्चात् दिनांक 5-5-79 को रेल पथ निरीक्षक प्रथम उत्तर रेलवे हनुमानगढ़ जंक्शन ने उसे दैनिक वेतन पर नियुक्त किया और तत्पश्चात् प्रार्थी राजेन्द्र को 26-1-80 को अस्थाई रेल कर्मचारी का पद एवं वेतनमान रुपये 196-232 दिया गया। तत्पश्चात् सहायक अभियन्ता प्रथम नोवर्न रेलवे हनुमानगढ़ जंक्शन ने उनके पत्र, दिनांक 3-8-81 से उसकी सेवा समाप्त वरुन्त प्रभाव से कर दी और रेल पथ निरीक्षक हनुमानगढ़ ने प्रार्थी श्रमिक राजेन्द्र को पत्र

सं. क्रमांक ई/5 दिनांक 5-8-81 को दिया जिसके द्वारा दिनांक 9-8-81 को 14 दिन का वेतन रुपये 174.30 प्राप्त करने के लिए लिखा।

प्रकरण संख्या 53/3 सन 84 श्री गुलाम रसूल के क्लेम के बारे में है। श्री गुलाम रसूल के क्लेम के सम्बन्ध में तथ्य इस प्रकार जाहिर आए हैं कि श्री गुलाम रसूल को निर्माण निरीक्षक द्वितीय उत्तर रेलवे हनुमानगढ़ जंक्शन ने उनके कार्य क्षेत्र में मैमन के पद पर बतौर दैनिक वेतन भोगी कर्मचारी के रूप में दिनांक 14-4-75 को नियोजित किया। श्री गुलाम रसूल को बाद अस्थाई रेल कर्मचारी का वेतनमान 260-400 दिया गया। तत्पश्चात् दिनांक 5-9-81 से प्रार्थी कर्मचारी गुलाम रसूल की सेवा समाप्त कर दी।

प्रकरण संख्या 53/5 सन 84 अर्जुन पुत्र जूआरा के सम्बन्ध में है। जिसे रेल पथ निरीक्षक द्वितीय उत्तर रेलवे जेतमर ने उनके कार्यक्षेत्र में प्रार्थी अर्जुन श्रमिक को दैनिक वेतन भोगी कर्मचारी के रूप में नियोजित किया। बाद में प्रार्थी को अस्थाई रेल कर्मचारी ऋतुंथ श्रेणी का वेतनमान दे दिया गया और उनके पश्चात् प्रार्थी श्रमिक अर्जुन की सेवाएं 28-7-81 को समाप्त कर दी गई।

उपरोक्त चारों श्रमिकों के क्लेम के सम्बन्ध में कुछ सामान्य तथ्य इस प्रकार जाहिर किये गये हैं कि उक्त चारों ही श्रमिकों ने एक कैलेण्डर वर्ष में 240 दिन से अधिक काम करने के आधार पर लगातार काम करने वाले औद्योगिक कर्मचारी का दर्जा प्राप्त कर लिया था। उपरोक्त चारों कर्मचारियों में से प्रत्येक को उनकी सेवा समाप्ति से पूर्व एक माह का नोटिस अथवा नोटिस वेतन मही दिया गया और न ही छटनी का मुआवजा दिया गया। इन जैसे कर्मचारियों की बर्गीकृता सूची घोषित नहीं की गई और पहले आए पाँछ जाए के सिद्धांत का भी पालन नहीं किया गया। अतः प्रत्येक के बारे में यह भी व्यक्त किया कि उनकी सेवाएं औद्योगिक विवाद अधिनियम की धारा 25 एफ एवं जी के प्रावधानों के अन्तर्गत समाप्त की गई हैं इसलिए नियोजक और प्रत्येक कर्मचारी के मध्य औद्योगिक विवाद उत्पन्न हो गया क्योंकि प्रत्येक कर्मचारी की सेवा दलित, अनुचित, अनाधिकृत रूप से समाप्त की गई इसलिए यह सेवा समाप्ति छटनी की परिभाषा में आती है। प्रत्येक कर्मचारी ने उसका विवाद केजुअल लेबर यूनियन बीकानेर के माध्यम से उठाया और कर्मचारीगण और श्रम विभाग के बीच में समझौता वार्ता बर्ती जो वार्ता असफल हुई। इस प्रकार समझौता वार्ता असफल होने से यह रेफरेंस इस औद्योगिक न्यायाधिकरण में वास्ते अधिनियमार्थ भेजा। यह भी जाहिर किया गया कि उपरोक्त सभी कर्मचारी प्रार्थी यूनियन के सदस्य हैं। अतः में यह जाहिर किया गया चूंकि इन कर्मचारियों की अनुचित अवधि एवं अनाधिकृत रूप से सेवा समाप्त की गई है इसलिए वे सेवा समाप्ति की तिथि से पूर्व पद एवं वेतन पर बहाल होने के अधिकारी हैं।

उपरोक्त प्रार्थी कर्मचारियों में से प्रत्येक ने पृथक्-पृथक् उत्तर क्लेम प्रस्तुत किया। प्रार्थी श्रमिकगण अर्जुन, हरिसिंह, व राजेन्द्र ने समरूप उत्तर क्लेम स्टेटमेंट पेश किये हैं जो निम्न प्रकार हैं :

इन तीनों श्रमिकगण के सम्बन्ध में अप्रार्थी रेलवे की ओर से यह जवाब पेश किए गए कि प्रार्थी हरि सिंह, अर्जुन व राजेन्द्र ने एक कैलेण्डर वर्ष में 240 दिन कार्य नहीं किया था और इस कारण से धारा 25 एफ. अधिनियम का उल्लंघन नहीं होता है। श्रमिकगण की सेवामुक्ति बेईमानी, प्रक्रमण्यता, आदेशों की अवहेलना तथा नियोजक के हितों पर प्रतिकूल प्रभाव डालने वाले आरोप सिद्ध होने के कारण वण्ड स्वरूप की गई है। श्रमिकगण ने नियोजक का विश्वास खो दिया है। इस सम्बन्ध में यह भी व्यक्त किया गया कि प्रार्थी श्रमिकगण को नियमानुसार आरोप पत्र दिया गया उसके विरुद्ध जांच की जाकर दोष सिद्ध होने पर रेलवे संस्थापन कोड बाल्युम I के नियम 149 के अंतर्गत उम्हें वरुन्त प्रभाव से सेवा मुक्त किया गया और नोटिस की अवधि के बबले में उन्हें 14 दिवस के वेतन भत्ते की राशि आदेश जारी होने की दिनांक पर प्राप्त कर रहे वेतन के समान गणना करके भुगतान किए जाने का आदेश मक्षम अधिकारी द्वारा पारित किया गया। अतः इस कारण से प्रार्थी श्रमिकगण हरि सिंह, राजेन्द्र व अर्जुन कोई राहत पाने के अधिकारी नहीं हैं।

प्रकरण संख्या 53/3 सन 84 में गुलाम रसूल श्रमिक के सम्बन्ध में रेलवे की ओर से उत्तर क्लेम इस प्रकार पेश किया गया कि केन्द्रीय सरकार द्वारा प्रेषित रेफरेंस विधी में दानपूर्ण होने से क्लेम चलने योग्य नहीं है। यह कि क्लेम में मिस उवाहण्डर आफ़ प्रापटीज का दावा होने से अप्राथी के विरुद्ध प्रमाणी अवाध पारित नहीं हो सकेगा। आगे सामान्य रूप से यह भी प्ली सी कि जब कभी किसी व्यक्ति की किसी विशेष कार्य के लिए बिना किसी अनुबन्ध पर रखा जाता है तो उसकी सेवाएं विशेष कार्य पूरा होने पर स्वतः ही समाप्त हो जाती हैं और इस प्रकार उस व्यक्ति के विशेष कार्य समाप्त होने पर उसके द्वारा कार्य सेवा समाप्ति छटनी की परिधि में नहीं आती है। आगे यह भी ऐतराज लिया कि प्रार्थी गुलाम रसूल ने 12 फ़ेब्रुअरी मास में 240 दिन कार्य नहीं किया। अतः उसका क्लेम औद्योगिक विवाद अधिनियम की धारा 25 एक के तहत वह संरक्षण पाने का अधिकारी नहीं है। अतः में यह भी ऐतराज दिया कि प्रार्थी गुलाम रसूल ने 25-3-75 से मैगन का कार्य किया है। वह स्वीकृत टी.एल.ए. पर समय समय पर निरन्तर कार्य किया है। एक ही टी.एल.ए. के अवसान के पश्चात वह दूसरी स्वीकृत टी.एल.ए. पर कार्य करता रहा है। इस प्रकार प्रार्थी को बिना किसी लिखित अनुबन्ध अथवा पत्र के केजुअल के रूप में समय समय पर रखा गया। विशेष कार्य पूरा होने पर उस स्वीकृत टी.एल.ए. की समाप्ति पर दूसरा विशिष्ट कार्य हेतु स्वीकृत टी.एल.ए. पर लगाया गया था। इस प्रकार प्रार्थी गुलाम रसूल की सेवा स्वतः ही विशिष्ट अवधि का कार्य पूरा होने पर समाप्त हो जाती है। अतः में यह भी ऐतराज लिया कि प्रार्थी गुलाम रसूल स्वेच्छा से अनारिक्त रूप से कार्य से अनुपस्थित हो गया। यद्यपि उसे टी.एल.ए. उपलब्ध था। चिकित्सीय परीक्षण हेतु कहा गया। उसने न तो अपने आप को चिकित्सा परीक्षण ही करवाया और न ही मेडिकल सीमां प्राप्त किया और न ही वह कार्य पर लौटा। अतः प्रार्थना की कि गुलाम रसूल का क्लेम भी निरस्त किया जावे।

प्रार्थी हरि सिंह के क्लेम की सम्पुटी में हरिसिंह स्वयं ने अपना शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा सत्यापित किया गया और हरि सिंह से श्री लालचन्द मेहरा अधिवक्ता रेलवे ने प्रतिपरीक्षण किया। इसके मद्दे मुकामिल रेलवे की ओर से श्री ओम प्रकाश पुज प्यारे खाल ने अपना शपथ पत्र पेश किया जिसे न्यायालय द्वारा सत्यापित किया गया। ओम प्रकाश से प्रार्थी हरि सिंह के अधिकृत प्रतिनिधि श्री भरत सिंह सैगर ने प्रतिपरीक्षण किया। क्लेम संख्या 53/2 सन 84 की सम्पुटी में श्री राजेन्द्र पुत्र श्री लाखन सांगोत्री ने स्वयं का शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा सत्यापित किया गया। श्री लाल चन्द मेहरा अधिवक्ता रेलवे द्वारा उमने जिरह की गई। रेलवे की ओर से श्री ओम प्रकाश पुत्र प्यारे खाल ने अपना शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा सत्यापित किया गया। भरत सिंह सैगर, अधिकृत प्रतिनिधि प्रार्थी राजेन्द्र ने ओम प्रकाश से जिरह की। क्लेम संख्या 53/5 सन 84 में अर्जुन पुत्र जरावा ने अपना शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा सत्यापित किया गया। श्री लाल चन्द मेहरा अधिवक्ता ने अर्जुन से प्रतिपरीक्षण किया। रेलवे की ओर से साक्ष्य में कोई गवाह पेश नहीं हुआ। क्लेम संख्या 53/3 सन 84 में श्री गुलाम रसूल स्वयं ने अपना शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा सत्यापित किया गया। रेलवे के वकील श्री एल.सी. मेहरा ने गुलाम रसूल से जिरह की। रेलवे की ओर से श्री सुरेश कुमार शर्मा का बयान कराया गया जिससे श्री भरत सिंह सैगर अधिकृत प्रतिनिधि प्रार्थी ने जिरह की।

मैंने बहुत अधिकृत प्रतिनिधि प्रार्थीगण अधिवक्ता अप्राथी रेलवे मुनी है। पञ्जाबियों का गयान पूर्वक अवलोकन किया है। स्टेटमेंट आफ़ क्लेम एवं उत्तर क्लेम के आधार पर निम्न विचार बिन्दु कायम किये जाते हैं।

1. आया प्रार्थीगण हरिमिह, पुत्र नसी मिह, राजेन्द्र पुत्र लाखन सांगोत्री, गुलाम रसूल पुत्र सादे खान एवं अर्जुन पुत्र जरावा ने उनकी सेवा समाप्ति से पूर्व एक फ़ेब्रुअरी वर्ष में 240 दिन से अधिक कार्य व लगातार कार्य करने वाले औद्योगिक कर्मकार हो गए थे।

2. आया प्रार्थीगण हरि मिह, राजेन्द्र, गुलाम रसूल व अर्जुन की सेवा समाप्ति छटनी की परिभाषा में आती है।

3. आया उद्दीर्ण चारों प्रार्थीगण की सेवा समाप्ति धारा 25 एक औद्योगिक विवाद अधिनियम के प्रावधान के अन्तर्गत में का गई है।

4. अनुपेक्ष प्रथम विचारणीय बिन्दु प्रार्थी श्रमिकगण के द्वारा सेवा समाप्ति से पूर्व फ़ेब्रुअरी वर्ष में 240 दिन निरन्तर कार्य कर औद्योगिक कर्मकार होने के सम्बन्ध में है। हरि मिह ने स्वयं के शपथ पत्र में यह व्यक्त किया कि उसे मई 1978 में दैनिक बेतन दर पर नियुक्त किया और दिनांक 6-9-79 से रेल पथ निरावक ऊपर रेलवे हनुमानगढ़ ने उसे बेतनमान 196-232 में अस्थाई पद दिया था और सहायक प्रथम अभियन्ता नार्दने रेलवे हनुमानगढ़ जंक्शन ने दिनांक 7-8-89 से उसकी सेवा समाप्ति की। हरि मिह के प्रकरण के सम्बन्ध में प्रार्थी के कार्य दिवसों के बारे में वकील डेजू चाटे प्रदेश एक्जीक्यूटिव एम. 1 प्रस्तुत किया है जो रेलवे के अधिवक्ता का भी स्वीकृत है। इसके सम्बन्ध में रेलवे अधिवक्ता स्वयं ने यह स्वीकार किया है कि सेवा समाप्ति से पूर्व हरि सिंह श्रमिक ने 240 दिन उसके कार्य दिवसों के पूरे कर लिए थे। रेलवे के गवाह एम. डब्ल्यू. 1 ओम प्रकाश स्वयं ने उसके प्रतिपरीक्षण में यह स्वीकार किया है कि दिनांक 14-7-79 से 4-8-81 तक लगातार कार्य किया। इस प्रकार रेलवे का साक्ष्य से ही हरि सिंह सेवा समाप्ति से पूर्व एक फ़ेब्रुअरी वर्ष में 240 दिन से अधिक निरन्तर कार्य करने वाला औद्योगिक कर्मकार हो गया था।

श्रमिक राजेन्द्र ने उसके शपथ पत्र में यह व्यक्त किया है कि दिनांक 15-6-77 का उत्तर रेलवे में इन्जीनरिंग शाखा में अस्थाई पद के पद पर नियुक्त हुआ तत्पश्चात दिनांक 5-5-79 का रेल पथ निरावक नार्दने रेलवे हनुमानगढ़ जंक्शन को देख रेल में उसे दैनिक बेतन दर पर नियुक्त किया गया। उसे 26-1-80 से बेतनमान 196-232 पर अस्थाई पद दिया और आने लिखाया कि उसे दिनांक 3-8-83 को नॉटिस प्रवर्ष डब्ल्यू. 1 दिया कि उसकी सेवा तुरन्त प्रभाव से समाप्ति का जाती है। आगे शपथ पत्र में यह भी कहा कि दिनांक 5-8-81 का रेल पथ निरावक हनुमानगढ़ ने उसे नॉटिस दिया कि वह दिनांक 9-8-81 का 14 दिन का बेतन 174.30 प्राप्त करे। राजेन्द्र के मद्दे मुकामिल ओम प्रकाश साक्ष्य में पेश हुआ है जिसने प्रार्थी राजेन्द्र को कार्य अवधि विवरण प्रवर्ष एक्जीक्यूटिव एम. 1 का प्रमाणित कराया है। एक्जीक्यूटिव एम. 1 के सम्बन्ध में गवाह ने यह स्वीकार किया कि एक्जीक्यूटिव एम. 1 राजेन्द्र की कार्य अवधि कार्यालय के गिनाई के आधार पर तैयार की गई है। प्रवर्ष एक्जीक्यूटिव एम. 1 से यह प्रमाणित है कि श्री राजेन्द्र ने उसकी सेवा समाप्ति से पूर्व एक फ़ेब्रुअरी वर्ष में 366 दिन कार्य किया और प्रार्थी व बिपक्षों रेलवे की शहादत से यह मनीसर्ता प्रमाणित है कि सेवा समाप्ति से पूर्व राजेन्द्र एक फ़ेब्रुअरी वर्ष में 240 दिन से अधिक लगातार कार्य कर औद्योगिक कर्मकार हो गया था।

प्रकरण संख्या 53/3 सन 84 के सम्बन्ध में श्री गुलाम रसूल स्वयं ने अपना शपथ पत्र पेश किया है और अपने इस बयान में गुलाम रसूल ने व्यक्त किया कि शपथ ग्रहिता दिनांक 14-4-75 का कार्य निरीक्षक द्वितीय उत्तर रेलवे हनुमानगढ़ जंक्शन का देखरेख में उसे मैगन के कार्य पर दैनिक बेतन पर नियुक्त किया था। तत्पश्चात शपथ ग्रहिता को बेतनमान 260-400 के बेतनमान में बेतन दिया गया। यह कि प्रार्थी श्रमिक की सेवा 5-9-81 का समाप्ति को गई। जिरह में श्री गुलाम रसूल ने व्यक्त किया कि वह लगातार कार्य करता रहा। गुलाम रसूल के सम्बन्ध में रेलवे के गवाह श्री गुणेश शर्मा ने यह स्वीकार किया कि गुलाम रसूल खान आई.ओ. डब्ल्यू. सूरतगढ़ के पास कार्य करता था और उसके कार्य दिवसों का चाट्टे एक्जीक्यूटिव एम. 1 आई.ओ. डब्ल्यू. सूरतगढ़ ने बनाया था। आगे यह भी माना कि गुलाम रसूल लगातार कार्य करता था जिरह में गवाह ने जाहिर किया कि मैं नहीं बता सकता कि कर्मकार गुलाम रसूल का मस्टर रोल में नाम कब तक बना मगर यह स्पष्ट तौर पर माना कि गुलाम रसूल का नाम मस्टर रोल में नहीं छल रहा है। यह भी माना कि गुलाम रसूल को मुआवजा नहीं दिया। दावा पक्ष का साक्ष्य

कार्य दिवसों के चार्ट एक्जीविट एम. 1 गुलाम रसूल के काम करने के सम्बन्ध में बख्शी प्रमाणित है और यह भी प्रमाणित है कि उसकी सेवाएं 4-9-81 को समाप्त की गई। इससे पूर्व एक कैलेण्डर वर्ष में एक्जीविट एम. 1 से 240 दिन से कहीं अधिक कार्य दिवस बनते हैं और यह तथ्य बख्शी प्रमाणित है कि श्री गुलाम रसूल की सेवा समाप्ति से एक कैलेण्डर वर्ष पूर्व में उसने 240 दिन से अधिक लगातार कार्य किया और वह सेवा समाप्ति से पूर्व एक कैलेण्डर वर्ष में 240 दिन से अधिक लगातार काम करने वाला औद्योगिक कर्मकार हो गया था।

प्रकरण सख्या 53/5 सन 84 में अर्जुन ने उसके शपथ पत्र में व्यक्त किया कि उसे सन 1978 में रैलिक बेतन दर पर नियुक्त किया गया था और दिनांक 17-11-80 से रेल पथ निरीक्षक उत्तर रेलवे जेनरल जिला गीतानगर ने उसे बेतनमान 200-250 में अस्थायी पद दिया था। उसने आगे यह भी कहा कि एक कैलेण्डर वर्ष में 240 दिन से अधिक काम करने के आधार पर वह लगातार काम करने वाला औद्योगिक कर्मकार हो गया था। आगे उसने यह भी व्यक्त किया कि सहायक अभियन्ता II उत्तर रेलवे हनुमानगढ़ जंक्शन ने दिनांक 28-7-81 को तुरन्त प्रभाव से उसकी सेवा समाप्त की। इसके मद्दे मुफाबिल प्रोम प्रकाश पुत्र प्यारे लाल को रेलवे की ओर से पेश हुआ है, उसने यह स्वीकार किया है कि अर्जुन को दिनांक 28-7-81 को हटाया गया था और उसकी सेवा दण्ड देने के स्वरूप समाप्त की गई थी। उसको कोई चार्ज शीट नहीं दी गई। इससे यह बख्शी प्रमाणित है कि प्रार्थी कर्मकार अर्जुन सेवा समाप्ति से पूर्व 240 दिन से अधिक कार्य कर लगातार कार्य करने वाला औद्योगिक कर्मकार हो गया था। उपरोक्त विवेचन के आधार पर प्रथम विचारणीय बिन्दु चारों कर्मकारों के पक्ष में इस प्रकार निर्णित किया जाता है कि कर्मकार हरि मिह राजेन्द्र, गुलाम रसूल व अर्जुन की सेवाएं समाप्त करने से पूर्व एक कैलेण्डर वर्ष में 240 दिन से अधिक उनके द्वारा उत्तर रेलवे में लगातार कार्य कर औद्योगिक कर्मकार हो गए हैं।

द्वितीय विचारणीय बिन्दु उक्त चारों श्रमिकों की सेवा समाप्ति छटनी की परिभाषा में आने के बारे में वायम किया गया है। य तृतीय विचारणीय बिन्दु छटनी धारा 25 एफ. अधिनियम के प्रावधानों के विरुद्ध होने के सम्बन्ध में बनाया गया है। इन दोनों विचारणीय बिन्दुओं को एक साथ तय किया जावेगा। इस सम्बन्ध में श्रमिकगण हरिमिह राजेन्द्र व अर्जुन की सेवा समाप्तियों के सम्बन्ध में मुख्यतः अप्रार्थी रेलवे की ओर से पी ली गई है कि इन प्रार्थीगण को रेलवे प्रशासन ने भारतीय रेलवे संस्थापन कोड जिल्व 1 के नियम 149 की रूह से सही सेवा मुक्त किया गया है। हरिमिह के सम्बन्ध में यह भी ऐतर्गज लिया गया है कि उसको नियमानुसार आरोप पत्र दिया गया और जांच की जाकर बोप सिद्ध होने पर उक्त रेलवे संस्थापन कोड, जिल्व 1 के नियम 149 के अंतर्गत उसे तुरन्त प्रभाव से सेवामुक्त किया गया था और नोटिस की अवधि के बदले में उसे 14 दिन के बेतन भत्ते की राशि देने के आदेश जारी होने के दिनांक पर प्राप्त कर रहे बेतन के समान गणना करके भुगतान किये जाने का आदेश सक्षम अधिकारी द्वारा पारित किया गया था। इस सम्बन्ध में रेलवे प्रशासन की ओर से श्री प्रोम प्रकाश एम. डब्ल्यू. 1 को साध्य में प्रस्तुत किया गया है। यद्यपि श्री प्रोम प्रकाश ने उसके शपथ पत्र में यह कहने का प्रयास किया है कि प्रार्थी हरि मिह के विरुद्ध अनुशासनात्मक कार्यवाही की गई थी जो सहायक अभियन्ता हनुमानगढ़ ने रेल पथ निरीक्षक हनुमानगढ़ की तीन दिन में जांच करके रिपोर्ट पेश करने का कहा था और रेल पथ निरीक्षक ने जांच करके सहायक अभियन्ता हनुमानगढ़ को दिनांक 5-8-81 को भेज दी और उन जांच रिपोर्ट के आधार पर तत्कालीन सहायक अभियन्ता हनुमानगढ़ श्री नानक चन्द गोयल द्वारा पत्रांक ई-26/बीयूम 4 दिनांक 7-3-81 से प्रार्थी हरि मिह की सेवा नियम 149 के तहत समाप्त कर दी। मगर इस गवाह की जिरह को देखते हैं तो उसकी गवाह ने फिरह में यह माना है कि प्रदण एक्जीविट डब्ल्यू. 2 में ऐसा नहीं है कि प्रार्थी हरि मिह को दण्ड स्वरूप नोकरी से निकाल दिया हो तो श्री प्रोम प्रकाश की स्वीकारोक्ति में यह तथ्य गलत प्रमाणित हो जाता है कि प्रार्थी हरि मिह की सेवाएं दण्ड स्वरूप समाप्त की गई। वैसे भी इस गवाह के प्रति परीक्षण से यह जाहिर आया है कि तथ्यांकित जांच का प्रार्थी को नोटिस नहीं दिया गया और

प्रार्थी हरि मिह को गवाहों से जिरह करने का अवसर नहीं दिया गया। जांच अधिकारी ने ही कार्यओं के मुताबिक गवाहों से स्वयं जिरह की। इन तीनों कारणों से जांच नैतिक व्याय के रूपापित सिद्धांतों के विरुद्ध होने एवं अनुशासनात्मक जांच के नियमों का पालन न करते हुए, जो जांच की गई वह अवैध थी। वैसे भारतीय रेलवे संस्थापन कोड बीयूम 1 के नियम 149 में अस्थायी रेलवे कर्मचारियों की सेवा समाप्ति के सम्बन्ध में नोटिस देने के बारे में उप नियम 6 निम्न प्रकार है।

Notwithstanding anything contained in clause (1), (2) and (4) of this rule, if the Railway servant or Apprentice is one to whom the provisions of the Industrial Disputes Act, 1947, he shall be entitled to notice or wage in lieu thereof in accordance with the provisions of that Act.

उपरोक्त 146 (6) के प्रावधान से यह स्पष्ट है कि रेलवे नियम 49 (1), (2) व (4) के अलावा जो प्रावधान नोटिस आदि के बारे में है, रेलवे कर्मचारियों या एप्रेन्टिस में अप्रेंटिस जिस पर औद्योगिक विवाद अधिनियम 1947 के प्रावधान लागू होते हैं उस अवस्था में नियम 149 के उप नियम (1), (2) व (4) के प्रावधानों के बावजूद भी सेवा समाप्ति करने समय रेलवे कर्मचारियों को नोटिस या नोटिस के बदले बेतन दिया जाना औद्योगिक विवाद अधिनियम के तहत आवश्यक है। यह स्वीकृत तथ्य है कि प्रार्थी हरि मिह को नोटिस नहीं दिया गया न उसे छटनी का मुआवजा दिया गया। ऐसी स्थिति में उनकी सेवा समाप्ति छटनी की परिभाषा में आती है और छटनी भी धारा 25 एफ. अधिनियम की रूह में अवैध पाई जाती है।

राजेन्द्र की सेवा समाप्ति के सम्बन्ध में उसने अपने शपथ पत्र में यह व्यक्त किया है कि सहायक अभियन्ता प्रथम उत्तर रेलवे हनुमानगढ़ ने पत्र सं. ई. 26/भाग चतुर्थ दिनांक 3-8-81 से उसकी सेवा तुरन्त प्रभाव से समाप्त करने का आदेश दिया। जिरह में उसने व्यक्त किया कि उसे हटाने से पहले उसी दिन आदेश एक्जीविट डब्ल्यू. 1 दिया था जिसके साथ उसे 14 दिन का बेतन नहीं दिया। इसके मुद्देमुकाबिल रेल की ओर से श्री प्रोम प्रकाश गवाह पेश हुआ जिसने प्रार्थी राजेन्द्र द्वारा मिरगी जरतैल मिह को गाली गलौच निकालने के सम्बन्ध में आर्जेन्टीट देना जाहिर किया मगर इस गवाह की जिरह में हमने स्पष्ट स्वीकार किया कि राजेन्द्र को मेजर पैनाल्टी न देने के लिए रिकार्ड के अनुसार कोई चार्जशीट नहीं दी थी। केवल विभागीय जांच की गई थी। हमने आगे यह भी स्वीकार किया है कि प्रार्थी श्रमिक को गवाहों से जिरह करने का कोई मौका नहीं दिया गया था और यह भी माना कि गवाहों से जिरह की गई वह जांच अधिकारी ने ही की थी। यह भी गवाह की जिरह से स्पष्ट हुआ कि रेलवे की ओर से कोई केस के लिए प्रस्तुतकार नियुक्त नहीं किया था। न ही जांच की रिपोर्ट प्रार्थी श्रमिक को दी। और यह भी जिरह से स्पष्ट हुआ कि प्रार्थी राजेन्द्र को दण्ड स्वरूप सेवा से पृथक किया था। प्रथम की यह साट है कि प्रार्थी की कोई मेजर पैनाल्टी की चार्जशीट नहीं दी और फिर उसे उसी जांच के फलस्वरूप मेजर पैनाल्टी दे दी। इस प्रकार वह जांच अवैध थी। प्रोम प्रकाश की जिरह से यह भी स्पष्ट है कि प्रार्थी श्रमिक राजेन्द्र को एक माह का नोटिस नहीं दिया न नोटिस के बदले बेतन दिया गया न ही उसे कोई मुआवजा दिया गया व बरीगटना सूची भी घोषित नहीं की गई। इस प्रकार रेलवे के गवाह की जिरह ही प्रार्थी राजेन्द्र की सेवा समाप्ति अवैध छटनी की तारीफ में आती है जो धारा 25 एफ. अधिनियम के प्रावधान के खिलाफ पाई जाती है।

अर्जुन के शपथ पत्र में उसने व्यक्त किया कि प्रार्थी अर्जुन को नोटिस सहायक अभियन्ता II उत्तर रेलवे हनुमानगढ़ जंक्शन ने दिनांक 28-7-81 को दिया और उसी के द्वारा उसकी सेवा तुरन्त प्रभाव से समाप्त की। उसने अपनी जिरह में यह स्पष्ट तौर से जाहिर किया कि उसे कोई चार्जशीट नहीं दी न उसे किसी आरोप का स्टैंडर्ड फार्म दिया। यह भी जाहिर किया कि उसे हटाने से पूर्व 14 दिन का नोटिस नहीं दिया न ही उसे हटाने से रहते नोटिस दिया। अर्जुन के मुद्देमुकाबिल प्रोम प्रकाश की माध्य काबिल गौर है जिसकी जिरह से यह प्रमाणित होता है कि अर्जुन को कोई चार्जशीट नहीं दी गई, न ही उसे कोई छटनी का

मुद्रावजा दिया गया और न उसके सम्बन्ध में कोई परिष्कृता सूचि दी घोषित की। अर्जुन की माध्यम रेलवे के गवाह से यह बखूबी प्रमाणित है कि अर्जुन को धारा 25 एफ औद्योगिक विवाद अधिनियम के प्रावधान के तहत न तो उसे एक माह का नोटिस दिया न नोटिस अवधि का वेतन दिया और न ही छटनी का मुआवजा दिया। यहाँ तक कि भारतीय रेलवे संस्थापन कोड बोल्डिंग 1 के नियम 149 के तहत उसे 14 दिन का नोटिस भी नहीं दिया। इस प्रकार जो औद्योगिक कर्मकार की सेवा बिना नोटिस के समाप्त की धारा 25 एफ. के प्रावधानों का उल्लंघन किए जाने से अर्जुन की छटनी अवधि पाई जाती है।

गुलाम रसूल की स्टेटमेंट आफ क्लेम के मूदेमुकाबिल रेलवे की ओर से यह जवाब पेश किया गया है कि उसे सैन के हैमियन से एक स्वीकृत टी.एल.ए. पर एक विशेष समय के लिए लगाया गया था। एक टी.एल.ए. की समाप्ति पर दूसरे टी.एल.ए. की स्वीकृति पर उसे काम पर लगाया जाता था। बिना किसी लिखित अनुबन्ध अवकाश के ही उसे केशुप्रल के रूप में समय-समय पर रखा गया और टी.एल.ए. की समाप्ति पर उसकी सेवा सन्त. ही समाप्त हो गई। इस रेलवे की प्नी के मूदे मुकाबिल गुलाम रसूल ने स्वयं के शपथ पत्र में यह शपथ पर व्यक्त किया है कि उनकी सेवा सरासर गलत, अव्यवस्था, अनुचित व अनाधिकृत अवधि रूप से समाप्त की। उगने यह भी स्पष्ट तौर से कहा कि उसे कोई सेवा समाप्ति का नोटिस नहीं दिया। गुलाम रसूल ने उसके प्रतिपरीक्षण में यह भी व्यक्त किया कि यह गलत है कि उसे विशेष कार्य के लिए टी.एल.ए. पर रखा था। उसने इसे भी गलत बताया कि विशेष कार्य पूरा होने पर दूसरे टी.एल.ए. पर उसे रखा हो। यह भी जिरह में व्यक्त किया कि उसकी कार्य अवधि में ब्रेक नहीं दिया और इसे भी गलत बताया कि वह अपनी स्वेच्छा से नौकरी छोड़ गया हो। इसके मूदे मुकाबिल रेलवे की ओर से सुरेश कुमार गवाह पेश हुआ जिनने व्यक्त किया कि गुलाम रसूल को मेडिकल टेस्ट के लिए लिखा कर भेजा था। मेडिकल के लिए उसने सीमा नहीं लिया। वह 5-9-81 को कार्य पर नहीं आया। उन्होंने इसे सेवा से नहीं निकाला बल्कि डाकटरी के लिए भेज रहे थे। श्री सुरेश कुमार ने उसकी जिरह में यह माना कि गुलाम रसूल श्रमिक को 25-3-75 को सेवा में लगाया था और 4-9-81 तक वह बगैर मेडिकल के रहा। यह भी वह नहीं बता सका कि गुलाम रसूल श्रमिक का नाम कब तक मस्टर रोल में चला। यह स्पष्ट तौर से माना कि इस समय गुलाम रसूल का नाम मस्टर रोल में नहीं चल रहा है। श्री सुरेश कुमार शर्मा ने जिरह में यह भी साफ तौर से मान लिया कि गुलाम रसूल को छटनी का मुआवजा नहीं दिया। मजदूरी समाप्त होने ही उसका नाम मस्टर रोल से हटा दिया। यह भी माना कि उसको चार्जशीट नहीं दी न विभागीय जांच की। मस्टर रोल से नाम हटा देता यह छटनी की परिभाषा में आता है। किसी प्रकार से भी इस तरह से सेवा से समाप्त कर देना छटनी की तारीफ में आता है। प्रार्थी श्रमिक गुलाम रसूल को छटनी का मुआवजा नहीं दिया न उसको चार्जशीट दी न उसके खिलाफ विभागीय जांच की। ऐसी सूरत में उसकी सेवा समाप्ति धारा 25 एफ अधिनियम के प्रावधान के विरुद्ध पाई जाती है इसलिए गुलाम रसूल की सेवा समाप्ति अवधि छटनी की तारीफ में आती है और उसकी सेवा समाप्ति अनुचित अवधि एवं अनाधिकृत रूप से की जाना प्रमाणित होती है। इस प्रकार यह विचारणीय बिन्दु संख्या 2 और तीन भी प्रार्थीगण के पक्ष में निर्णित किये जाते हैं।

सूक्ति प्रार्थीगण हरि मिश्र, राजेन्द्र, अर्जुन और गुलाम रसूल ही छटनी धारा 25 एफ. औद्योगिक विवाद अधिनियम के प्रावधानों के विरुद्ध की गई होना प्रमाणित हुई है इस प्रकार उनकी सेवा समाप्ति अनुचित अवधि एवं अनियमित तौर से की गई है। उपरोक्त चारों प्रार्थीगण उनकी सेवा समाप्ति की तिथि से अब तक निरन्तर सेवा में माना जायेगा और इस अवधि के दौरान जो भी वे लाभ उत्पन्न हुए हैं उन्हें भी वे पाने के अधिकारी पाए जाते हैं।

अर्वाइ

1 हरि मिश्र पुत्र श्री नन्धी मिश्र की सेवा समाप्ति दिनांक 7-8-81 को अवधि अनुचित तौर से की गई है। अतः उसकी छटनी धारा 25 एफ. औद्योगिक विवाद अधिनियम के प्रावधान के विरुद्ध किए जाने से अवधि एवं अनुचित पाई जाती है। अतः उसकी सेवा समाप्ति का आदेश दिनांक 7-8-81 निरस्त किया जाता है और वह 8-8-81 से सेवा समाप्ति से पूर्ववत् पद व वेतन पर उसे बहाल किया जाता है। 8-8-81 के पश्चात से बहाली की तिथि तक वह वेतन एरियर्स के रूप में प्राप्त करेगा। सेवा समाप्ति की तिथि से बहाली की तिथि तक के दौरान यदि अन्य कोई लाभ अर्जित हुए हों तो वे भी वह प्राप्त करने का अधिकारी होगा।

2 श्री राजेन्द्र पुत्र श्री लाखन गंगोत्री की सेवा दिनांक 3-8-81 को अवधि रूप से समाप्त की गई जो सेवा समाप्ति का अवधि आदेश निरस्त किया जाता है। इसकी छटनी धारा 25 एफ. अधिनियम के प्रावधानों के विरुद्ध की गई प्रमाणित हुई है। अतः श्रमिक राजेन्द्र पुत्र लाखन गंगोत्री उसकी सेवा समाप्ति दिनांक 3-8-81 से पूर्ववत् पद व वेतन पर बहाल होने का अधिकारी पाया जाता है। श्री राजेन्द्र सेवा समाप्ति की तिथि 3-8-81 से सेवा में बहाली की तिथि तक व पूर्ववत् दर से वेतन एरियर्स के रूप में प्राप्त करेगा यदि 3-8-81 से बहाल किये जाने की तारीख तक यदि अन्य और देय लाभ अर्जित हुए हैं वह भी वह प्राप्त करने का अधिकारी होगा।

3 गुलाम रसूल की सेवा समाप्ति दिनांक 5-9-81 को अवधि पाई जाती है। उसकी सेवा समाप्ति के आदेश को निरस्त किया जाता है। श्री गुलाम रसूल की छटनी धारा 25 एफ. अधिनियम के प्रावधान के विरुद्ध होने से अवधि पाई जाती है। अतः प्रार्थी श्रमिक गुलाम रसूल सेवा समाप्ति की तारीख से उसके पूर्ववत् पद व वेतन पर बहाल होने का अधिकारी है वह दिनांक 5-9-81 के पश्चात बहाल होने की तिथि के मध्य काल का वेतन नियमानुसार एरियर्स के रूप में प्राप्त करेगा। इस दौरान में यदि अन्य कोई लाभ अर्जित हुए हों तो वे भी वह पाने का अधिकारी होगा।

श्री अर्जुन पुत्र जवारा की सेवा समाप्ति दिनांक 28-7-81 को अनुचित एवं अवधि रूप से निरस्त की गई। उसकी छटनी धारा 25 एफ. अधिनियम के प्रावधान के विरुद्ध पाई जाने से अवधि थी। इसलिए श्री अर्जुन पुत्र जवारा की सेवा समाप्ति आदेश दिनांक 28-7-81 निरस्त किया जाकर उसे सेवा समाप्ति के दिन से पूर्ववत् पद व वेतन पर बहाल किया जाता है। सेवा समाप्ति के दिन के पश्चात और उसे बहाल करने की तिथि व वह उमी प्रम में नियमानुसार वेतन प्राप्त करेगा और इस अवधि तक जो भी देय लाभ उसे अर्जित हुए हों वे भी वह पाने का अधिकारी होगा।

श्री महावीर पुत्र तेजा के सम्बन्ध में पहले ही नौ डिस्प्यूट अर्वाइ पारित हो चुका है। उपरोक्त अर्वाइ की प्रतिलिपि संलग्न धारा 17 (1) औद्योगिक विवाद अधिनियम 1947 केन्द्रीय सरकार को वास्तव प्रकाशनार्थ भेजी जावे। अर्वाइ आज दिनांक 28-2-89 को बीकानेर कैम्प पर जारी किया गया।

[यं एन-41011/25/83 डी II (बी)]

प्रताप सिंह वादक, न्यायाधीश

नई दिल्ली, 26 मई, 1989

का. प्रा. 1341--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसरण में, केन्द्रीय सरकार टेक्नीकाल डिपार्टमेंट शाहजहापुर के प्रबन्धन से सम्बन्धित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, कानपुर के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-5-89 प्राप्त हुआ था :

New Delhi, the 26th May, 1989

S.O. 1341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the award of the Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telegraph Department, Shahjahanpur and their workmen, which was received by the Central Government on the 12-5-89.

ANNEXURE

BEFORE SHRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, KANPUR

Industrial Dispute No. 139 of 1987

In the matter of Shri Shiv Kumar Dubey,

S/o Shri Rama Shanker Dubey,

Village & Post Rasoolabad,

District Faizabad

Petitioner.

AND

The Sub Divisional Officer,

Telegraph,

Shahjahanpur,

Uttar Pradesh

Opp. Party

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-40012/43/86-D.II(B), dated 27 September 1987, has referred the following dispute for adjudication :—

Whether the action of the management of Telegraph Department Shahjahanpur, in terminating the services of Shri Shiv Kumar Dubey, casual labour w.e.f. 19-10-84, is legal and justified? If not, to what relief the workman entitled to?

2. It is the admitted case of the parties that the above named workman had worked for 1336 days during the period 19-9-80 to 18-10-84 and in the gradation list of the casual labour of Shahjahanpur Sub Division dt. 31-7-83, his name appeared at serial no. 19.

3. The workman's case in brief is that his services were terminated by the management w.e.f. 19-10-84, without notice or notice pay. In his place sub Inspector (T) Mohd. Qayum took one Rajesh Kumar Chaubey. Having worked for more than 240 days in 1983, he ought to have been given regular appointment as line man. In connection with his illegal retrenchment he made an application to Sub-Inspector Mohd. Qayum, but in vain. Thereafter on 16-1-85, he sent applications under certificate of posting to SDO(T) Shahjahanpur and Divisional Engineer (T), Sitapur, but to no effect. Subsequently he sent registered letters on 9-2-85, 8-3-85 and 12-3-85, to Dy. Divisional Officer Shahjahanpur Divisional Engineer (T) Sitapur and to the Hon'ble Minister for Information. When nothing happened on his representation he gave registered notice u/s. 80 c.n.c. to the parties concerned. He has therefore, prayed that the management be directed to post him as regular employee or regular lineman w.e.f. January 1984 and pay him arrears of wages from January 1984.

3. In defence, the management plead that the workman went on leave for 4 days and thereafter he did not turnup. Shri Rajesh Kumar Choubey was kept in service w.e.f. 1-11-79. He was senior to the workman in question. The question of regular appointment to the workman does not arise as so far those working as casual labour since 1977, have not been given regular appointments.

4. In his rejoinder the workman has denied that he proceeded on leave as alleged by the management and thereafter did not join duty. According to him his services were illegally terminated in order to accommodate Shri

Rajesh Kumar Chaubey, who was an employee of other Division and who was also junior to him.

5. In support of his case the workman has filed his affidavits dt. 16-8-88 and 26-7-88 and in support of their case the management have filed the affidavit dt. 4-2-89 of Shri Lok Pal Singh Chauhan SDO(T). Both sides have also relied upon a number of documents in support of their respective cases.

6. Admittedly the workman had worked till 18-10-84 and during the period 19-9-80 to 18-10-84 he had worked for 1336 days. In his cross examination the management witness has admitted that during 1984 workman had worked for 269 days. In view of it the workman was entitled to the benefits provided for by section 25F I.D. Act at the time of termination of his services. This is the general Law.

7. The first dispute between the parties is on the point whether or not workman had gone on 4 days casual leave. Since the workman has denied this fact, the burden of proof on this point lies on the management.

8. In para 2 of his affidavit, the management witness has deposed that the workman went on leave for 4 days in October 1984 and thereafter did not turnup nor he gave any application regarding his absence to SIT Mohd. Qayum who is dead. In the said para of his affidavit, the management witness has referred to the report of the said SIT copy of which is annexure I to the rejoinder affidavit and also filed photostat copy of Mustor Roll which is annexure II to the said affidavit. In the verification clause it is stated that the contents of paras 1 and 2 of the affidavit are correct to his personal knowledge. In his cross examination the management witness has denied that the workman had not gone on 4 days casual leave which he had taken orally.

9. Annexure I to the rejoinder affidavit dt. 2-5-88 filed on behalf of the management is the copy of the report dt. Nil of Late Mohd. Qayum SIT. It appears to have been received in the office of Dy. Divisional Officer (T) Shahjahanpur on 15-4-85. In his report Mohd. Qayum has written that on 15th or 16th October 1984, the workman had told him that he was going to his home for 4 days. He further writes that since then the workman had not written him any letter nor had come back on duty. This fact that Mohd. Qayum is dead is also admitted by the workman in his cross examination.

10. Annexure II to the rejoinder affidavit is the copy of Mustor Roll which shows that in the month of October, he had been marked present upto 18th and thereafter he had been marked absent.

11. The above evidence led on behalf of the management thus shows that in the month of October 1984, he had worked upto 18th and not thereafter.

12. Now let us see what the workman says, against it. In para 4 of his affidavit dt. 26-7-88, the workman writes that it is wrong to say that he had proceeded on leave and thereafter did not join duty. He was very much present and his services were illegally terminated by SDO Telegraphs Shahjahanpur in order to accommodate his man Shri Rajesh Kumar Chaubey. He further writes that when till 26th October, 1984 he was not allowed to resume duty, he moved an application on 26th October 1984 but when despite that he was not given employment he went back to his village.

13. In the cross examination he states that on 19-10-84, he presented himself for duty at about 7 a.m. It was only at about 10.30 a.m. when others had been sent on duty that Mohd. Qayum SIT told him that he would not be him on duty. At that time no one was present. When he inquired about its reason Sh. Qayum did not give him any reason for his act. Then he has stated that at about 4 p.m. that very day he met SDO (T) in his office at Shahjahanpur, who after hearing him assured him that in 5 or 6 days time he would be given duty. He admits

that he made no complaint in this regard in writing. According to him when till 25-10-84, nothing came out he went back to his village which is in District Faizabad. It was on 26-10-84 that he wrote a letter to SFT Shahjahanpur, under certificate of posting. The copy of the letter is annexure I to his affidavit dt. 26-7-88.

14. I have gone through the copy of the letter dated 26-10-84, referred to above and in this letter the facts deposed to by him in his cross examination that Sub Inspector (T) did not give him duty and that he had met that very day SDO (T) Shahjahanpur in his office, who after hearing him had assured him that he would be called on duty in 5 or 6 days time do not find mention. Further after the assurance alleged to have been procured by him from SDO (T) Shahjahanpur, he would have written the letter in case of non giving of duty to SDO (T) Shahjahanpur and not to Sub Inspector (T).

15. Next I refer to the copies of other letters filed by him in this case. They are annexure III and IV of his affidavit dated 16-8-88. Annexure III is the copy of letter dated 16-1-85 addressed to Up Mandal Adhikari (T) Shahjahanpur and Annexure IV is the copy of letter dated 8-3-85 addressed to the said Officer. In these two letters also no mention is made of facts which are alleged by him in his cross examination to have transpired on 19-10-84. Annexure IV to the affidavit dated 16-8-88 is the copy of application dated 19-8-86 filed by him before AIC (C) Dehradun. In this application also no mention is made of the above facts.

16. I may state here that the receipt of these letters has not admitted by the management witness in his affidavit. He has simply admitted the receipt of notice u/s 80 C.P.C. dated 26-3-85 given by the workman. To prove that the above letters were sent, the workman has not filed the certificate of posting nor postal receipts of registration.

17. There is no evidence that any officer of the Telegraph department or Mohd. Qayum SFT had any enmity with the workman. There is no explanation why he was singled out in order to accommodate Shri Rajesh Kumar Chaubey. Therefore, management's evidence which finds corroboration from documentary evidence appears to be far more reliable than the evidence of the workman. I therefore, believe the management case that from 19-10-84 he went on leave for 4 days for which he took oral permission from Mohd. Qayum Sub Inspector (T).

18. The next important question which requires determination is whether the workman left the job of his own or he came back thereafter to resume duty.

19. In para 5 of his statement in cross examination, the workman has deposed that when till 25-10-84 nothing came out, he went back home. Soon thereafter he said that thereafter he did not come back to Shahjahanpur. However, he immediately changed and said that he visited Shahjahanpur on 1-12-84 and after 2 or 4 days he went back home. As stated by me above, in order to prove that letter dated 26-10-84, 16-1-85 and 8-3-85 were written by him, he has not filed certificate of posting and postal receipts of registration. He has also not filed the copy of notice dated 26-3-85 u/s 80 C.P.C., the receipt of which is admitted by the management. The management too has not filed the original notice. At least this notice would have shown as to when representations in the past were made by him to the authorities concerned.

20. Annexure V to the affidavit dated 16-8-88 of the workman is said to be the copy of application dt. 19-8-86 made by the workman before AIC(C) Dehradun. In this he has made reference to his sending his application on 16-1-85 under certificate of posting to SDO (T) Shahjahanpur and Divisional Engineer (T) Sitapur, registered letter dated 9-2-85 to Up Mandal Adhikari (T) Shahjahanpur. Registered letter dated 8-3-85 to Divisional Engineer (T) Sitapur, letter dated 12-3-85 to Hon'ble Minister for Information and notice u/s 80 C.P.C. dated 26-3-85.

21. Whatever may be said about lapses on the part of the workman in establishing his case, atleast from the notice under section 80 C.P.C. dated 26-3-85, one thing can be inferred that such a notice would have been given by him only when nothing had come out on his earlier written representation. All that we cannot say is as to actually when these oral or written representations were made by the workman. In the circumstances he cannot be said to have abandoned the job. There is one more circumstance which lends support to the above view. In para 2 of the written statement it is pleaded by the management that 18 days wages of the month of October, 1984 of the workman were remitted by money order to the workman at his home address on 7-11-84. There is no documentary evidence from the side of the management to show that while remitting the amount it was stated that since after taking 4 days casual leave he had not turned up, it was being presumed that he had abandoned the job. Further under section 25F he was entitled to notice, or notice pay besides retrenchment compensation. At least retrenchment compensation to which he was entitled should have been remitted to him.

21. In the circumstances having worked continuously for more than one year and in view of non-compliance of provisions of section 25F I. D. Act, the termination of the services of the workman w.e.f. 19-10-84 cannot be held as legal and justified. Since there is no evidence as to when workman came back after going on leave w.e.f. 19-10-84 I allow him back wages w.e.f. 1-1-85, of course with continuity of service w.e.f. 19-10-84. He shall be re-instated.

22. Reference is answered accordingly.

ARJAN DEV, Presiding Officer
[No. L-40012/43/86 D-II(B)]

का. प्र. 1342-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेल्किम्युनिकेशन (माइक्रोवेव प्रोजेक्ट) मुरादाबाद के प्रबन्धन से सम्बन्धित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचवट को प्रकाशित करना है, जो केन्द्रीय सरकार को 12-5-89 को प्राप्त हुआ था।

S.O. 1342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecommunication (Microwave Project), Muradabad and their workmen, which was received by the Central Government on the 12-5-89.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
KANPUR

Industrial Dispute No. 130 of 1988

In the matter of dispute :

BETWEEN

Shri Kartar Singh Driver,
C/o Meharaj Singh,
Near PAC Naya Gaon,
Moradabad. U.P.

AND

The Divisional Engineer,
Microwave Project,
Fajpat Nagar,
Moradabad. U.P.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-40012/22/87-D.II(B) dated 11-10-88

has referred the following dispute for adjudication to this Tribunal;

Whether the action of the management of Telecommunication Department in relation to their establishment of Microwave Project Moradabad in terminating the services of Shri Kartar Singh Driver w.e.f. 23-11-85 (A.N.) is justified? If not, to what relief the workman is entitled to?

2. The workman's case in brief is that he joined the services in the Microwave Project, Moradabad under the Divisional Engineer, Microwave Project Moradabad, on 20-8-82 as a Truck Driver. In November, 1985, a false allegation was made against him that he was involved in an accident as a result of which a person received injuries; that he was arrested by the police but was got released by the Assistant Engineer, Shri Ram Araj; and that the accident took place on account of his being under the influence of liquor. As a result of the said false allegation he was denied duty w.e.f. 23-11-85. He alleges that thereafter he made repeated requests for allowing him to resume duties but in vain. Ultimately he gave a registered notice on 27-1-86 and in reply to the said notice he was informed that his services had been terminated w.e.f. 23-11-85 due to his aforesaid carelessness, negligence and unbecoming conduct. According to the workman he was never given any Chargesheet nor any departmental inquiry was held against him in respect of the alleged accident. As such the order terminating his services is illegal. He is therefore, entitled to reinstatement with continuity of service and with full back wages.

3. On behalf of the management written statement has been filed by the Divisional Engineer, Telecom., Microwave Project Moradabad. It is pleaded that the workman was selected for deployment as a casual driver in the Division on 4-2-82. On workman's request dt. 15-3-83, copy annexure 1, his services were terminated w.e.f. 23-3-83 vide office order, copy annexure 2. Thereafter, whenever he came for work, if a vehicle happened to be available, he was engaged strictly on daily wages. It is further pleaded that the workman's behaviour with the staff was not good. He was reprimanded several times but every time he gave the assurances that he would not give any cause for complaint any further. On 23-11-85, he rammed the Truck which he was driving in a rickshaw carrying 3 persons one of whom sustained injuries. He was taken in police custody, but on the intervention of the officials of the department he was let off by the police after stern warning. Copy of the report of the Microwave Project Moradabad regarding the said accident is annexure IV. Keeping all these in view it was found that the workman was not suitable for deployment any more. Since the work of the project is confined to hills of Kumaun and Garhwal Regions which have serpentine roads with steep gradients, it is not safe to engage the workman any more keeping in view the safety of the lives of the government officials and the Govt. property.

4. In support of his case the workman has filed his own affidavit and a number of documents. On the other hand, in support of their case, the management filed the affidavit of Shri G. C. Srivastava, Divisional Engineer, but examined Shri Ram Araj, the Assistant Engineer, while adducing evidence. The management also relied upon a number of documents.

5. Ext. M-3 and M-4 are the copies of reports dt. nil and 24-11-85, respectively, the former by driver Ram Antar and Driver Sher Singh and the latter by Tech. Shishu Pal with regard to the accident of Truck No. DHL 780 driven by the workman against a rickshaw rashly causing injuries to 2 persons going on the said rickshaw, arrest of the workman by the police of police station Civil Lines, Moradabad, and workman's release on bail.

6. Ext. M-11 is the copy of order dt. 24-11-85, named by Shri Ram Araj Assistant Engineer terminating his services on account of the said accident and his past misconduct.

7. It has been admitted by the management witness in cross examination that in respect of the misconduct of chargesheet was given to the workman nor any regular inquiry was conducted by the department against him. We have, therefore, to see whether or not in the absence of any departmental inquiry proceedings, the services of the workman could have been terminated by the management specially when the alleged accident is denied by the workman.

8. Ext. W-16 is the copy of statement showing the period during which the workman had worked from the beginning of his service in the Microwave Project, Moradabad. The statement has been admitted by the management. It shows that in 1985 upto 23-11-85 he had worked for 232 days. In December, 1984 he had worked for 31 days. It means that during the period of one year preceding the date of termination of his services he had worked for 263 days. In other words before the date of termination of his services he had worked continuously for one year within the meaning of section 25F I.D. Act. His services could have been terminated had compliance of section 25F been made by the management. In the instant case, the management has not made the compliance of section 25F I.D. Act, as has been admitted by the management witness. In his cross examination he has said that the workman was neither given any notice or notice pay nor was paid any retrenchment compensation.

9. The order of termination of workman's services is, therefore void ab initio. It is illegal even *ab initio* as the order of termination against the workman casts stigma in the absence of any departmental proceedings that he is guilty of misconduct.

10. Hence, it is held that the action of the management of Telecommunication Department in relation to their establishment of Microwave Project Moradabad in terminating the services of Shri Kartar Singh Driver w.e.f. 23-11-85 (a.n.) is not justified. He is, therefore, entitled to reinstatement with continuity of service with full back wages and other consequential benefits subject to his producing an affidavit to the effect that he was not gainfully employed anywhere else during the period when he was out of job.

11. Reference is answered accordingly.

ARJAN DEV. Presiding Officer,

[No. L-40012/22/87-D.II(B)]

का. प्र. 1343. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रेलवे मेल सर्विस 'जे' डिविजन अजमेर के प्रबंधन से सम्बन्धित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 प्राप्त हुआ था।

S.O. 1343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Railway Mail Service, 'J' Division, Ajmer and their workmen, which was received by the Central Government on the 16-5-89.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

कैस नं सी.आई.टी. 29/88

रेफरेंस: केन्द्रीय सरकार, श्रम मंत्रालय नई दिल्ली की अधिसूचना संख्या एन. 40012/8/87-डी. II (बी) दिनांक 6-5-88

श्री सोहन लाल अग्रवाल मार्फत श्री रामेश्वर लाल बूधवाल
उदार धासेरी, अजमेर। प्रार्थी पक्ष

बनाम

सुपरिन्टेण्डेंट, धार. एम. एम. "जे" डिवीजन, अजमेर—
नियोजक पक्ष

उपस्थिति

प्रार्थी पक्ष की ओर से : श्री बी. एम. बागडा एवं प्रार्थी स्वयं
नियोजक पक्ष की ओर से : कोई हाजिर नहीं

जयपुर 13 नवम्बर 1988

अग्रार्थ

भारत सरकार, श्रम संचालन के डेस्क आफिसर ने उनकी अधिसूचना संख्या एम. 40012/8/87-डी II-(बी) दिनांक 6-5-88, निम्न विवाद इस न्यायाधिकरण को अंतर्गत धारा 10(1)(डी) के अध्याय 2 (ए) औद्योगिक विवाद अधिनियम, 1947 जिसे तत्पश्चात् अधिनियम लिखा जाएगा, वास्ते अधिनिर्णायार्थ प्रेषित किया है।

"Whether the action of the management of R.M. 'J' Division, Ajmer in terminating Shri Sohan Lal Agarwal, ex-Tiffin pay from service with effect from 3-12-86 is legal/justified? If not, to what relief the workman concerned is entitled and from what date?"

बाद प्राप्ति इस रेफरेन्स को इस न्यायाधिकरण में पंजीकृत किया गया और उभय पक्षधारों को नोटिस जारी किये गये। नोटिस के पश्चात् प्रार्थी सोहन लाल अग्रवाल स्वयं उपस्थित आया जिसे आज अपना स्टेटमेंट आफ क्लेम प्रस्तुत करना था। मप्रार्थी अधीक्षक, धार. एम. एम. जे डिवीजन, अजमेर पर इस न्यायाधिकरण द्वारा जारी की गई नोटिस की तारीख 10-10-88 को हो चुकी है, मगर बाधजुद नोटिस प्राप्ति के बड़ उपस्थित नहीं आया है। प्रार्थी सोहन लाल ने उसके अधिकृत प्रतिनिधि श्री बी. एम. बागडा के द्वारा एक प्रार्थना पत्र इस आशय का प्रस्तुत किया कि यद्यपि केन्द्रीय सरकार द्वारा उनकी सेवा समाप्ति का मामला इस न्यायाधिकरण को निर्देशित किया गया है मगर उसकी सेवा समाप्ति का विवाद केन्द्रीय सर्विस ट्रिब्यूनल, जोधपुर के समक्ष पेन कर रखा है, जो विचाराधीन है और वह वहीं से राहत चाहता है। ऐसी परिस्थिति में यह न्यायाधिकरण मौजूदा विवाद के सम्बन्ध में कोई कार्यवाही आगे न कर नो डिस्चूड अगार्ड पारित कर देवे।

श्री सोहन लाल अग्रवाल को श्री बी. एम. बागडा ने शिनाखत किया है। चूंकि उसकी सेवा समाप्ति के सम्बन्ध में मामला केन्द्रीय सेवा न्यायाधिकरण, जोधपुर के समक्ष जेरकार है और वह वहीं से अनुतोष प्राप्त करना चाहता है। मौजूदा विवाद को आगे न चला कर प्रार्थी ने कोई विवाद नहीं का पंचाट पारित करने की प्रार्थना की है। विपक्षी की ओर से नोटिस प्राप्ति के बाधजुद भी कोई उपस्थित नहीं है, न ही किसी प्रकार का एग्रेसर उनकी ओर से उठाया गया है। इन सभी परिस्थितियों को देखते हुए इस रेफरेन्स के सम्बन्ध में नो डिस्चूड अगार्ड पारित किया जाता है।

अगार्ड आज दिनांक 15-11-88 को पारित किया गया और अग्रवाल में पढ़ कर सुनाया गया। अगार्ड निर्मातुगार केन्द्र सरकार को वास्ते प्रकाशन भेजा जाए।

प्रमाण सिद्ध यादव, न्यायाधीश

[नं. एम - 40012 / 8 / 87 डी - II (बी)]

का. आ. 1344—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार श्री

दर्शन, कुमार और अन्य द्वारा, धारा 33ए के तहत, सेन्ट्रल रेलवे के प्रबन्धतंत्र से सम्बद्ध नियोजकों के विरुद्ध एक शिकायत पर अनुबंध में निर्दिष्ट केन्द्रीय सरकार औद्योगिक अधीक्षण, कानपुर के पंचाट की प्रकाशित करती है, जो केन्द्रीय सरकार की 12-5-89 प्राप्ति द्वारा था

S.O. 1344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur in respect of a complaint u/s 33A of the said Act filed by Sh. Darshan Kumar and others against the management of Central Railway, Jhansi which was received by the Central Government on 12-5-89.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
PANDU NAGAR, KANPUR, U.P.

Industrial Dispute No. 75 of 1987

In the matter of dispute

BETWEEN

Shri Darshan Kumar Kaushik & others,
C/o. Shri Surender Singh,
2/336 Namneir Agra

AND

Divisional Railway Manager (P),
Central Railway Jhainsi, U.P.

AWARD U/s. 33-A I.D. Act

1. This is an application under section 33-A I.D. Act, filed by Shri Surender Singh, the authorised representative for the workmen with the affidavit of Shri Mahavir Prasad son of Shri Nanua Ram.

2. Facts of the case appear in the affidavit of Shri Mahavir are that during the pendency of I.D. Case No. 69/86 the Railway Administration in violation of the provisions of section 33 and 25F I.D. Act, terminated the services of—

1. Shri Nathi Lal son of Sh. Amar Singh
2. Shri Dhani Ram son of Sh. Mohar Singh
3. Shri Bhikh Chand son of Sh. Havo
4. Shri Puran son of Sh. Giriraj
5. Shri Raddhey Shyam s/o Sh. Beeda
6. Shri Ashok Kumar s/o Brij Kishore
7. Shri Khubi son of Shri Maida
8. Shri Ramesh Chandra S/o Jagannath
9. Shri Nihal son of Shri Yadram
10. Shri Mahavir son of Sh. Nanua Ram

w.e.f. 19-5-87. It is further alleged that the Railway Administration has not paid them arrears of wages on the basis of 4th Pay Commission report. It is, therefore, prayed that the above named workmen in question be ordered to be reinstated in service.

3. The case is contested by the Railway Administration. The Railway Administration has flatly denied the case set up by the workmen through their authorised representative. According to the Railway Administration, they have not done anything against the interest of the workmen during the pendency of I.D. No. 69/86.

4. From the side of the workmen rejoinder has also been filed and in para 3 of the rejoinder the names of the following six workmen have also been added—

1. Shri Beeda.
2. Shri Mazood.

3. Shri Bachhoo.
4. Shri Ramesh Chand.
5. Shri Mohan and
6. Shri Barkat.

32 Chakrata Road
Dehradun U.P.

Petitioner

AND

The Chief Dehradun Centre LDI
Logging Development Institute
Kalagarh Road
Dehradun U.P.

—Management

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-42011/14/85-D.II(B) dt. 23rd March 1987, has referred the following dispute for adjudication to this Tribunal:

Whether the action of the management of Logging Development Dehradun in terminating the services of S/Shri Bachhram, Anil Kumar, Pooran Singh is legal and justified? If not to what relief the concerned workmen are entitled to and from what date?

2. The case of the above named three workmen is that their services were terminated without notice, malafide and illegally w.e.f. 9-5-85 without any reason in violation of the standing orders when juniors were still working they are therefore, entitled for reinstatement with continuity of service and back wages.

3. In defence the management plead that the 3 workmen were retrenched as surplus employees in accordance with the prescribed rules and procedure. At the time of retrenchment they were junior most casual daily workers. According to the management they were served with notices of termination and in the said notices reasons for termination of their services were given. The posts on which they were engaged ceased to exist after 9-5-85. They were engaged for a particular job for specific period. As a matter of fact prior to March 85 the Institute was housed in 5 rented buildings and for an effective round the clock watch and ward of the five rented buildings chowkidars were employed on casual daily basis. As soon as the building of the Institute was constructed and the institute shifted into it in May 1985 several chowkidars who were working on casual daily basis became surplus, and consequently the 3 workmen who happened to be junior most were retrenched from service in accordance with the provisions of the I.D. Act, 1947. The management deny that there is any illegality in the order of termination of their services.

4. The workmen have filed rejoinder, but in it they have alleged no new fact.

5. In support of their case the workmen filed the affidavit of Shri Anil Kumar one of the workmen in question, and in support of their case, the management filed the affidavit of Shri A. K. Jain an officer in the Logging Development Institute Dehradun. Both sides have relied upon a number of documents filed by them.

6. Ext. M-2 is the copy of the seniority list. Its formal proof has been waived by Shri Bhupender Singh the authorised representative for the workmen. The names of S/Shri Bachhram Puran Singh and Anil Kumar appear at serial nos. 9, 10 and 11 respectively and all of them have been shown as having been appointed initially on 25-3-83. The list consists of 13 persons. Persons named at serial No. 12 and 13 are S/Shri Kedar Nath and Rajesh Kumar respectively whose dates of appointment are given as 23-7-83 and 23-8-83 respectively. It has been stated by the management witness in his cross examination that the services of these two persons were also terminated w.e.f. 9-5-85. I may state here that this seniority list is of persons who had been working as chowkidars as on 1-4-85.

7. In his cross examination, the management witness has deposed that all the 3 workmen of this case were given breaks of one day in service after every 3 months. The breaks therefore will be treated as artificial. He has further

5. In support of their case the workmen has relied on the affidavit of Shri Mahavir son of Shri Nanua Ram. From the side of the management no evidence has been led.

6. I have gone through the evidence on record and have examined the record of I.D. No. 69/86. To me the application under section 33A appears to be misconceived.

7. I.D. 69/86 as per reference order related to the 11 workmen. Shri Ramesh Chand son of Shri Jagannath named in the affidavit accompanying the petition under section 33A I.D. Act is not the same, Ramesh Chand who has been named in the reference order of I.D. No. 69 of 86. In I.D. 69/86 the workmen filed the affidavit of Shri Ramesh Chand son of Devi Ram and it was he who was examined and cross examined in the said case. The second man Ashok Kumar son of Shri Brij Kishore named in the affidavit of Shri Mahavir also does not appear to be Shri Ashok Kumar Pathak named in the reference order. It has not been shown that both are one and the same person. The other workman named in the affidavit of Shri Mahavir do not find mention in the reference order. Even the name of S/Shri Beeda, Mazzeed, Bachho, Mohan Singh and Barkat do not find place in the reference order. The other Ramesh Chand named in para 3 of the rejoinder happens to be the same person of the same name referred to in the reference order or not has not been proved. In his cross examination Shri Mahavir has deposed that he does not know the name of all the 16 persons of case. He has further stated that the Railway Administration has terminated the services of the 16 workmen before the moving of application before ALC(C). If it were so the fact deposed to by him in para 3 of his affidavit that their services were terminated with effect from 19-5-87 cannot be believed. If their services were terminated before the moving of application before ALC(C), the question of violation of the provisions of section 33 I.D. Act does not arise at all.

8. In the circumstances, the application under section 33-A I.D. Act is liable to be rejected.

9. The application under section 33A I.D. Act is hereby rejected.

ARJAN DEV, Presiding Officer

[No. L-13011/2/89-IR(1DU)]

का. आ. 1343 --औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गण में केन्द्रीय सरकार औद्योगिक डिब्रलमेंट देहरादून के प्रबन्धतंत्र से सम्बद्ध नियोजकों को उनके कर्मचारियों के बीच अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 12-5-89 को प्राप्त हुआ था।

S.O. 1345.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Logging Development Dehradun and their workmen, which was received by the Central Government on 12-5-89.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL,

KANPUR

Industrial Dispute No. 47 of 1987

In the matter of dispute between

Shri R. D. Tyagi
Secretary
Bhartiya Mazdoor Sangh

stated that since the date of their appointment they had continuously worked till 8-5-85. There is no reliable documentary evidence from the management's side to show that they had been engaged from time to time for specific periods so as to attract the provisions sub clause (bb) of clause (oo) of Sec. 2 of the I.D. Act. Having rendered services for more than one year continuously before retrenchment, they were entitled to one month's notice or notice pay and retrenchment compensation u/s. 25F I.D. Act.

8. Ext. M-1 is the copy of notice dated 9-4-85, given by the management to 10 chowkidars including 3 workmen in question. It also shows that copies of notices were also endorsed to these three workmen. Its formal proof has been waived by the Authorised Representative for the workmen. In the circumstances, the mere denial on the part of the workmen that they were not given any notice is of no avail. In his cross examination, the management witness has admitted that no retrenchment compensation was paid to the three workmen in question at the time of termination of their services. In view of non compliance of this mandatory condition, the order of termination of the 3 workmen becomes void abinitio. Accordingly it is held as illegal.

9. As a general rule in view of the order of termination being illegal, the three workmen in question are entitled to reinstatement. But in the present case the facts appears to be different. According to the management, the services of these three workmen who were working as chowkidars were dispensed with as they had become surplus on account of the shifting of the office into the new building constructed by the management. The management witness in his cross examination at page 3 has deposed that no new chowkidars had been kept by the management after 9-5-85.

10. In his cross examination Shri Anil Kumar one of the workman, has deposed that upto May, 1985, the Office of Logging Development Institute were situate in different buildings and in every such building there was a separate chowkidar. He has further deposed that in May, 1985, the building of the Institute became one and the different buildings in which the offices of the institute were previously situated were vacated as these offices shifted to the new building. At page 2 of his cross examination he has said that after the shifting of the different offices of the Institute into one building the services of the several chowkidars like him were terminated. Thus from the own statements of one of the workmen, namely, Shri Anil Kumar the case of the management stands proved, on this point.

11. The question is whether at the time of their retrenchment any chowkidar junior to them was retained in service or not. There is no cogent evidence from the side of the workmen on this point. Rather from the evidence of the management witness it becomes clear that the two chowkidars, namely, S/Shri Kedar Nath and Rajesh Kumar, who were junior to them, their services were also terminated by the management w.e.f. 9-5-85.

12. In para 4 of his affidavit Shri Anil Kumar, has stated that after the termination of their services the management re-engaged Shri Mitranand and others who were junior to them. The name of Shri Mitranand does not find place in the seniority list copy Ext. M-2. Who were others has not been clarified by the workmen witness. We have to see whether in the category to which the workmen belonged any person junior to them was reappointed or not. There is no cogent evidence on this point from the side of the workmen.

13. At the time of arguments, on behalf of the workmen, Shri Bhupender Singh, authorised representative for the workmen filed two documents, one copy of the order dt. 10-3-88 of the Hon'ble Supreme Court in Civil Writ Petition No. 1351 of 1987, Rakesh Kumar Soni and others Vs. Ministry of Environment and Forest and Wild Life and others and copy of order dt. 14-10-88 of D. Registrar Van Anusandhan Sansthan Avam Mahavidyalaya.

14. Document No. 1 purports to be the copy of certified copy of the order. From the order it appears that before the Hon'ble Supreme Court it was not disputed that the petitioners had been working in the establishment for more than 4 to 5 years. The Hon'ble Supreme Court, therefore, directed the opposite party to absorb them on regular basis with the further direction that if there had been any other similarly situated employees senior to the petitioners they should be given the same benefit. The copy of the Civil Writ Petition has not been filed. Had it been filed it would have shown as to who were the petitioners and in what capacity they had been working as daily rated employees. In the light of seniority list copy Ext. M-2 it was also then possible to see whether any of the petitioners in the writ petition was junior to workmen in question. In fact at the time of filing of these documents it was suggested to the authorised representative for the workmen that if he thought it proper then he could seek proper amendment in the claim statement and that the Tribunal was prepared to reopen the case even at this very late stage. But for reasons best known to him he did not avail the opportunity given to him. During the course of arguments my attention was invited to persons named at serial no. 190 and 191 of document no. 2. Their names are Jai Prasad and Chandra Mani. From the seniority list copy Ext. M-2 it is evident that their dates of appointment are 28-2-80 and 15-10-81. It therefore means that both of them were senior to the workmen in question. Document no. 2 in fact refers to the office order about the appointment of the persons named on temporary basis in the pay scale of Rs. 750-12-870-EB-14-940.

15. We have found above that on the shifting of the various offices of the management into one building several chowkidar including workmen in question became surplus. We have further found that no chowkidar junior to workmen in question was retained in service. We have also seen that no chowkidar junior to the workmen were reappointed after 9-5-85. In the circumstances reinstatement of their services cannot be ordered but only compensation can be awarded to the workmen in question, when there no longer exists any vacancy of chowkidar.

16. Looking to the facts and circumstances of the case, these three workmen are awarded a sum of Rs. 10,000 each as compensation instead of reinstatement.

17. Held, therefore, that the action of the management of Logging Development Institute, Dehradun, in terminating the services of S/Shri Bachiram, Puran Singh and Anil Kumar is neither legal nor justified. Since no post of chowkidar is available with the management each of them is held entitled to a sum of Rs. 10,000 as compensation.

18. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

[No. L-42011/14/85-D.11(B)]

का. प्रा. 1346--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आम्बिस्टेंट इंडियन उमर रेलवे कानपुर के प्रबंधन में गठित नियोजकों और उनके कामकाजों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के गैर-काय को प्रकटित करती है, जो केन्द्रीय सरकार को 12-5-89 प्राप्त हुआ था।

S.O. 1346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Asstt. Engineer Northern Railway, Kanpur and their workmen, which was received by the Central Government on 12-5-1989.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUS-
TRIAL TRIBUNAL CUM LABOUR
COURT, KANPUR, U.P.

Industrial Dispute No. 115 of 1987
In the matter of dispute between

Shri R. D. Tiwari Zonal Working President
Uttar Railway Karamchari Union Soshan
Bajaj Lane Samesh Ganj Lucknow.

PETITIONER

AND

The Divisional Railway Manager Northern Rail-
way Allahabad.

Opp. PARTY

AWARD

1. The Central Government, Ministry of La-
bour, vide its notification No. L-41(112)48/96-D.II(B)
dated 24th August, 1987, has referred the following
dispute for adjudication to this Tribunal :

Whether the action of the Assistant Engineer
Northern Railway, Kanpur in removing
Shri Jagrup Gangman, under E.W.1/III,
N.R., Kanpur from service w.e.f. 10-2-83
is legal and justified? If not, to what relief
the workman concerned is entitled?

2. The admitted facts are that on the basis of F.I.R.
lodged against the above named workman u/s. 332
I.P.C. at P. S. Puhi, Kanpur Nagar, for alleged beat-
ing by him of Shri R. P. Verma, I.O.W. the workman
was suspended by P.W.1 Head Quarter on 7-1-83.
Thereafter, he was served with a memo dt. 12-1-83
issued by the Assistant Engineer Head Quarter in
respect of the alleged occurrence to show cause why
the penalty of removal from service be not imposed
on him. The workman in his reply denied the charge
but being not satisfied with his reply the Asstt. Eng.
Head Quarter by his order dt. 10-2-1983 served on
the workman on 28-2-83, terminated his services.

3. The workman's case is that he had not given
a beating to Shri R. P. Varma, IOW In respect of
which FIR was lodged against him at P.S. Juhi,
Kanpur Nagar. According to him in the criminal
case which was registered on the basis of F.I.R.
after investigation he was acquitted by M. M. Juhi,
by his order dated 26-3-1985. On 27-4-1985 and
28-5-1985, he applied for being taken back on duty
but to no effect. He has also alleged that against the
order of removal from service he filed an appeal
before the Sr. Divisional Engineer but he has not been
informed so far about its result. According to him the
order of removal from service without conducting any
inquiry against him is bad in law. Hence, he is
entitled to reinstatement with continuity of service
and full back wages.

4. The case set up by the management in defence
is that while working as Gangman under P.W. 1.
Head Quarter Kanpur it was noticed that the work-
man was making encroachment on railway land by

putting up an unauthorised hut in front of Clock No. 3
in Military Camp Colony, Kanpur, Sr. Engineer by
his letter dt. 15-9-1982 directed the workman to
remove the unauthorised structure immediately. When
the workman did not obey the order, Shri R. P. Verma,
IOW was deputed to do the needful. On 7-1-1983
at about 1.30 p.m. when the said IOW alongwith
S/Shri Gyan Singl, and Amrit Lal Khalsi reached
the spot, he found the workman plastering the tatar
walls of the hut unauthorisedly built by him with
mud. When Shri R. P. Verma asked the workman
to stop working on the illegal construction, the workman
with his sons and associates gave a beating to
Shri R. P. Verma with lathis causing serious head in-
juries. He was therefore, suspended, issued memoran-
dum and finally removed from service. The manage-
ment plead that no appeal alleged to have been filed
by the workman appears to have been received by
Sr. Divisional Engineer. Order to removal from service
having been passed under Rule 14(ii) of the Railway
Servants (Discipline & Conduct) Rules, 1968, the
Court has no jurisdiction to sit in review or in appeal
against the said order of removal from service.

5. The workmen filed a rejoinder also but in it he
has alleged no new facts.

6. In support of his case the workman has filed his
affidavit and the management have filed the affidavit
of Shri O. P. Saxena P.W. 1. Both the sides have
also relied on documentary evidence.

7. It is the admitted case of the parties that in
respect of the alleged occurrence of 7-1-1983, in the
criminal case the workman was acquitted of the charge
u/s 332 I.P.C. This is also proved from the copy of
the judgment dated 26-3-1985 of Metropolitan Ma-
gistrate, Juhi Kanpur Nagar filed by the workman.

8. Annexure IV to the affidavit of the management
witness, is the copy of memo dated 12-1-1983, given
by Asstt. Engineer Head Quarter to the workman to
show cause why the penalty of removal from the
service be not imposed on him in view of Head In-
juries inflicted by him with his associates on Shri R. P.
Verma. In the memorandum it was stated that the
action of the workman was such as to render his
further retention in public service undesirable. It
was further observed that he was not a fit person to
be retained in service and hence a notice in exercise
of the powers conferred by Rule 14(ii) of the Rail-
way Servants (Disciplinary & Appeal) Rules was
being given.

9. Annexure VI to the said affidavit is the copy
of order dated 1-2-1983 by means of which after con-
sidering the workman's reply dated 14-1-1983 to the
memorandum issued to him. The Assistant Engineer
Head Quarter removed him from service after holding
that he was convinced that it was not necessary to
hold DAR Inquiry into the case as there was enough
evidence on record to show that the workman was
guilty of the charges levelled against him.

10. Rule 14(ii) reads as under :

"Notwithstanding anything contained in Rules 9
to 13, where the disciplinary authority is
satisfied for reasons to be recorded by it

in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit.

It has been argued by Shri Bhupender Singh, authorised representative for the workman, that the order of removal from service is illegal as the workman was not afforded any opportunity of explanation or hearing before the passing of the said order. In support of his contention he has placed reliance on the ruling in the case of Shri Bankey Behari v. Union of India and others 1984 IC 690 Alld (DB). After placing reliance on the ruling in the case of Inder Deo Singh v. Union of India 1977 Lab. IC 105 and some more rulings. Their Lordships held that while acting under Rule 4(ii) of the Rules Disciplinary Authority must comply with the principles of natural justice and it must give opportunity to the railway servants before inflicting penalty. This ruling is not helpful to the workman as in the present case it is even admitted to the workman that he was served with memo copy annexure IV to the affidavit of management witness. By means of this memo the workman was given an opportunity of making representation within 15 days of the receipt of it on the proposed penalty of removal from service.

11. In fact in my opinion, the order of removal from service cannot be sustained on another vital point. Rule 14(ii) clearly lays down that Disciplinary Authority must be satisfied that it is not reasonably practicable to hold an inquiry against the delinquent in the manner provided for in the rules and that these reasons are to be recorded in writing. All that has been stated in the memorandum is that the action of the workman in inflicting head injuries on Shri R. P. Verma with his associates was such that it was not desirable to retain him in service. In the final order dated 10-2-198, the Asstt. Engineer Head Quarter observed that having fully applied his mind to the facts of the case, he was convinced that it was not necessary to hold BAR inquiry into the case, as there was enough evidence on record to show that the workman was guilty of the charges levelled against him. I think these are not the reasons contemplated by rule 14(ii). In this connection I would like to refer to the ruling in the case of Smt. Sandhya Pathak Versus Union of India 1988 Lab IC 1588 (Alld) (DB). In this case Rule 30(II) of National Textile Corporation U.P. Limited Employees Conduct (Discipline & Appeal) Rules 1975 which is in Pari materia with Article 31(2) of the Constitution was considered. It was held that where no witness is ready to come forward because of undue influence and pressure exercised by delinquents upon them and on conduct of threats given to Inquiry Officer, it is not reasonably practicable to hold enquiry, removal of delinquent from service in such cases will be proper. In para 7 of the ruling at pages 1530 and 1531, the ruling given by the Hon'ble Supreme Court in the case of Satyavir Singh v. Union of India 1986 Lab IC 1, has been referred. In the said case the Hon'ble Supreme Court referred to situations in which it would not

be reasonably practicable to hold an inquiry. For instance where a civil servant himself or with his associates so terrorizes the witnesses that they are not prepared to give evidence or where the civil servant himself or with his associates intimidates and so terrorizes the officer appointed to hold inquiry that he is afraid to hold inquiry or where an atmosphere of violence or of general indiscipline and insubordination prevails; it being immaterial whether the civil servant is or is not a party to bringing about such situation. To my mind as has been held by the Hon'ble Supreme Court these are the circumstances where it can be said that it is not reasonably practicable to hold an inquiry in the manner prescribed.

12. In the instant case there is no such evidence from the side of the management nor any such inference can be drawn from the memorandum and the final order of removal from service. Rather it appears that the version of Shri R. P. Verma was taken as correct on the face of it. Besides we have seen that the workman has been acquitted in the criminal case.

13. Hence, in the circumstances, the order of removal from service dated 10-2-83, cannot be upheld. It is an illegal order.

14. It is, therefore, held that the action of the Assistant Engineer N. R. Railway Kanpur in removing Shri Jagroop Singh from service w.e.f. 10-2-1983 is neither legal nor justified. Accordingly the workman is held entitled to be reinstated in service with continuity of service and with full back wages.

15. Reference is answered accordingly

ARJAN DEV, Presiding Officer

[No. L-41012/48/86-D.II(B)]

HARI SINGH, Desk Officer

नई दिल्ली, 26 मई, 1989

का. आ. 1347—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबन्धतंत्र के संबंध नियोक्तों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, घनवाद के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-5-89 को प्राप्त हुआ था।

New Delhi, the 26th May, 1989

S.O. 1347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Allahabad Bank and their workmen, which was received by the Central Government on the 15-5-89.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d)
(2A) of the Industrial Disputes Act, 1947.

Reference No. 2 of 1983.

PARTIES :

Employers in relation to the management of
Allahabad Bank.

AND

Their Workmen.

APPEARANCES :

For the Employers—Shri Shrikant, Law Officer.

For the Workmen—Shri S. K. Tiwary, President,
Bihar State Allahabad Bank Employees'
Union (NCBE).

STATE : Bihar. INDUSTRY : Bank.

Dated, the 28th April, 1989.

AWARD

By Order No. L-12011/40/87-D.II(A), dated, the 29th January, 1988, the Ministry of Labour, Government of India, has in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal.

"Whether the action of the Allahabad Bank in placing Shri S. N. Tiwari, Clerk, Bokaro Steel City Branch, junior to others (appointed later in clerical cadre) on the basis of settlement dated 22-1-1983 to which his Union is not the party, is justified? If not, to what relief the concerned (and other such members of the Bihar State Allahabad Bank Employees Union not party to the settlement) entitled to?"

2. The case of Allahabad Bank as appearing from the written statement-cum-rejoinder submitted by it, details apart, is as follows :

Allahabad Bank is nationalised Bank having its Head Office at Calcutta, Zonal Office at Patna and Regional Office at Ranchi. The functioning of the Bank is governed by laws of the land, the Awards and the Bi-partite Settlements in force. Settlement was arrived at between the Bank and the recognised union, namely, All India Allahabad Bank Employees' Co-ordination Committee in 1975. This settlement is binding on all the workmen of the Bank. Bihar State Allahabad Bank Employees' Union (National Confederation of Bank's Employees—shortly referred to as N.C.B.E.) has no locus standi to challenge it now after 13 years. Another settlement dated 22-1-83 was arrived at between the Bank and the recognised union. After the expiry of first settlement of 1975 a second settlement was arrived at between the Bank and its recognised union, namely, All India Allahabad Bank Employees Co-ordination Committee

on 22-1-83. This settlement is valid as it has been made under section 18 of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957. The settlement is a rightful one and the benefits thereunder have been enjoyed by all the award staff including the members of disputant union, namely, Bihar State Allahabad Bank Employees' Union. As per provisions of the settlement dated 22-1-83 seniority list is prepared in terms of para 2 of clause 5 from time to time and circularised to all the Branches/Offices in the system for information of the employees. The Bank published a seniority list as on 31-12-84 and as on 31-12-85. The seniority list is prepared on the basis of norms provided in Clause 1 of Pt. V of the settlement dated 22-1-83 which runs as follows :

"(d) In case of an employee stated above who has at any time in the past been a member of subordinate cadre, his length of service will be reckoned from the date of his promotion to the non-subordinate cadre. Further, one year additional seniority will be allowed every three completed years of service reckoned from the date of appointment on probation in sub-ordinate cadre. However, such employee stated above will not be eligible for further promotion unless he has worked in the sub-ordinate cadre for a period of 2 years.

(e) Subject to a minimum 2 years actual service in non-subordinate cadre no eligible employee with less than 5 years seniority in terms of (a), (b), (c) & (d) above shall be eligible for promotion as special Assistant."

On the basis of the above norms the seniority list is published from time to time and the placement of some employees may be affected due to acquiring additional qualifications by other employee or due to promotion of an employee from sub-staff category with sufficiently reckonable service. The seniority of R. P. Rai was rightly shown at Sl. No. 16 by giving him weightage of 3 years for his service of about 11 years 8 months in sub-staff cadre as per norms of the above Rules for promotion (i.e. one year for every completed 3 years of service) and weightage of one year for graduation. Similarly the seniority of Rajendra Prasad and Kailash Prasad was drawn by giving weightage for 3 years for the service of about 11 years 5 months and 11 years 9 months respectively in sub-ordinate staff cadre. This seniority rating is as per seniority list published as on 31-12-84 where the seniority of S. K. Tiwary, the concerned workman, was rightly shown in Sl. No. 45. Thereafter the Bank published another seniority list on 31-12-85 and there the seniority of S. K. Tiwary has been elevated by 3 positions i.e. 42nd position. The preparation of seniority list as on 31-12-87 is under process. While circularising the seniority list sufficient opportunity is afforded to all the employees to point-out discrepancies or lodge their objections to the seniority position. Any objection of discrepancy is carefully examined and wherever necessary due modification is effected in the seniority list. Objection of the concerned workman was duly examined by the Bank in terms of the Rules for promotion as also on the basis of material facts and the reviewed position was communicated to him by letter dated

19-12-85. The settlement is lawfully enforceable and as a matter of fact, is in force for the last 5 years and the fruits of the same are being enjoyed by all the employees irrespective of their affiliation to any union. The members of the concerned union including the concerned workman too have already taken the advantage of the said settlement in the course of their service life. They are bound to abide by the provisions of the said settlement. The concerned workman has challenged the settlement by a writ No. C.W.J.C. No. 4960 of 1987 which was dismissed by the Hon'ble High Court, Patna vide order dated 10-11-1987 and subsequently a review petition No. 80 of 1987 was also dismissed by the Hon'ble Court. In view of these facts and circumstances the management of the Bank prays that its action in placing S. K. Tiwari in the seniority list on the basis of settlement dated 22-1-1983 be held to be justified.

3. The case of the concerned workman as President of Bihar State Allahabad Bank Employees' Union, benefit of details, is as follows :

The name of the concerned workman has been wrongly written in the terms of reference as S. N. Tiwari : his correct name is S. K. Tiwari and this being a clerical error, may be ignored by the Tribunal. He is at present the President of Bihar State Allahabad Bank Employees Union. He joined the services of the Bank on 4-11-1975 and was confirmed in the post in 1975. Since the date of his joining he has been continuously working as Clerk and is posted at present at Bokaro Steel City Branch of the Bank. Allahabad Bank published the seniority list of the clerical staff on 31-12-1984. In the seniority list his name appears at Sl. No. 45 and his date of birth was shown 5-9-1945. Union scrutinising the seniority list published by the Bank, he detected that the published list did not reflect the correct position with respect to seniority of services on clerical cadre. It was found that persons junior to him in service were shown senior in the seniority list. For example, R. P. Rai who is junior to him in service has been placed in Sl. No. 16 and his date of appointment has been shown 13-5-1976. Similarly, the name of Rajendra Prasad, who is junior to him appears in Sl. No. 27 and his date of appointment has been shown as 4-5-1976. Likewise, the name of Kailash Prasad has appeared in Sl. No. 28 and his appointment has been shown as 5-6-1976. He filed a petition pretesting about his wrong placement in the seniority list before Asstt. General Manager of the Bank on 30-4-1985. After repeated reminders the Chief Manager of Allahabad Bank by letter dated 19-12-1985 informed him that his juniors were rightly shown as senior in the seniority list and that the seniority list was prepared and published in accordance with the rules for promotion dated 22-1-1983 which is based on a settlement between the management of Allahabad Bank and the members of the sponsoring trade union i.e. Co-ordination Committee. After receipt of this letter he sent another letter dated 19-2-1985 to the General Manager of Allahabad Bank pointing out in the said letter that the rules of promotion dated 22-1-1983 was not binding upon him and that the said rule was ille-

gal and ultravires. The General Manager sat over the matter which provoked him to send the reminder to the General Manager. But even then no reply was given. Thereafter his union took up the cause and raised an industrial dispute before the A.L.C.(C), Patna. The A.L.C. started conciliation proceeding. But since the management refused to re-consider the matter, he was constrained to submit a failure report to the Central Government. The appropriate Government has been pleased to refer the dispute for adjudication before this Tribunal. The conditions of service of the employees of Allahabad Bank are governed by the provisions of Sastri Award and Desai Award and also by Bi-partite settlement entered into between the Indian Bank's Association (I.B.A.) and the worker's Unions. But in none of them Awards and Bi-partite Settlements there is even slightest stipulation that the persons senior in service in the cadre of clerk can be put below who was appointed later in the cadre. The action of the Allahabad Bank is not supported even on applying the general principle of service law which envisages that settled seniority can not be unsettled without showing any cogent reason. It has been alleged that the rules for promotion dated 22-1-1983 is Ultra Vires to the statutory law, namely, Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. It has been asserted that his union or its parent body was never consulted by the Bank before entering into the settlement dated 22-1-1983 and that the members of the union were never represented in the settlement. The settlement between the management of Allahabad Bank and its sponsoring union, namely, Co-ordination Committee can not bind either him or his union in view of Section 18(1) of the Industrial Disputes Act, 1947. It is also alleged that the settlement dated 22-1-1983 is mala fide have on the part of the management of the Bank to encourage inter union rivalry National Confederation of the Bank Employees (NCBE) is recognised by the Indian Bank's Association (I.B.A.) as the representative of the overwhelming majority of the Bank employees. The Bank employees have got fundamental right to have fair terms and conditions of service. In the circumstance it has been prayed that the management be directed to place S. K. Tiwari, Clerk, in appropriate place in the seniority list as per his seniority in the clerical cadre. It is also prayed that the members of his union can not be bound by settlement dated 22-1-1983 to which they are not a party.

4. In rejoinder to the written statement of the concerned workman the Bank has denied and disputed the contentions raised therein and asserted that its action with regard to the seniority rating of the concerned workman is justified.

5. In rejoinder to the written statement of the management the concerned workman has stated that there can be no estoppel against statute and that mere acquiescence in a settlement or its acceptance by a workman will not make him a party to the settlement for the purpose of Section 18 of the Industrial Disputes Act. It has been asserted that even a minor

union of workers can raise an industrial dispute even if any union which constitutes majority of workmen enters into a settlement with the employer. It has also been contended that giving a person a higher place in seniority list is a matter of promotion and that no one can be appointed in a post with retrospective effect. The management has never consulted his union at any stage regarding the settlement on the rules for promotion. It has been asserted that the settlement dated 22-1-1983 is not and can not be made binding on his union.

6. Allahabad Bank has asserted in reply to the rejoinder of the concerned workman that the settlement on the rules for promotion has been arrived at in accordance with the provisions of Industrial Disputes Act and it is binding on all.

7. The Bank has examined only one witness, namely, W.W. 1 L. Goinda Rao working as Personnel Officer and laid in evidence a sheaf of documents which have been marked Ext. M-1 to M-8. The concerned workman or his union has not examined any witness but laid in evidence some documents which have been marked Exts. W-1 and W-2.

8. Admittedly, Allahabad Bank (hereinafter referred to as Bank) is a nationalised Bank having its Head Office at Calcutta, Zonal Office at Patna and Regional Office at Ranchi. The Bank has got one branch at Bokaro Steel City which is known as Bokaro Steel City Branch. There exists no dispute that Sunil Kumar Tiwary, shortly referred to as S. K. Tiwary, has been working in Bokaro Steel City Branch of the Bank as Clerk. It appears that his short name has been incorrectly written as S. N. Tiwary instead of S.K. Tiwary in the schedule to the reference and this mistake, for the purpose of disposing of the present reference, is ignored.

9. It is the irrefragable position that S. K. Tiwary joined the services of the Bank as Clerk on 4-11-75; he was confirmed in that post in 1976. The materials on record disclose that he is a B.A.

The workman of the Bank are organised into trade unions. Allahabad Bank Employees' Co-ordination Committee is one of the trade unions operating in the Bank. M.W.1 L. Govinda Rao, now working as Personnel Officer of the Bank has stated that his Co-ordination Committee is the recognised union representing the members of staff covered by Awards/Settlements. There is no dispute that another union is operating in the Bank which is known as Bihar State Allahabad Bank Employees' Union affiliated to its parent body known as National Confederation of Bank Employees (N.C.B.E.). Sri S. K. Tiwary is the President of the Bihar State Allahabad Bank Employees Union. It is claimed in the written statement of the concerned workman that National Confederation of Bank Employees (N.C.B.E.) is recognised by Indian Banks' Association (IBA) as the representative of the overwhelming majority of the Bank employees. The management of the Bank has offered no comment on these statements and stated that these statements made are matters of records. The concerned workman has produced no evidence in support of this contention. Anyway, the claim of the concerned

workman that National Confederation of Bank Employees is recognised as the representative of overwhelming majority of the Bank employees has got no direct relevance to the present industrial dispute.

10. The crux of the present dispute is whether the action of the management of the Bank in placing S. K. Tiwary, the concerned workman, clerk junior to others on the basis of settlement dated 22-1-1983 to which his union was not a party is justified or not. Evidently, his reference refers to the seniority list published by the Bank on the basis of settlement dated 22-1-1983.

Sri S. K. Tiwary had contended that the management has got no authority to publish this seniority list on the basis of settlement dated 22-1-1983 and even if they have, the same is not binding on him and his union since his union was not a party to the settlement.

Sri Srikant, authorised representative of the Bank has contended that the settlement was not the result of an industrial dispute and that the settlement answers to the test of reasonableness and also the test of serving largest good. He has further contended that the seniority list was prepared by the management in connection with the matters, namely, concerning promotion and that the management have no obligation to consult the trade unions over the issue. He has also asserted that the seniority list was prepared on the basis of settlement dated 22-1-1983 and that the settlement has not violated the guidelines with regard to rules for promotion as envisaged in Sastry Award and Desai Award. He has lastly contended that since Sri Tiwary has accepted the benefits under the settlement, he is not competent to dispute the provisions thereof.

11. Sri Tiwary has submitted that as per Section 19(1)(d) of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, the Board of Director of a corresponding new Bank may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, make regulations or any scheme with regard to the conditions and limitation subject to which the corresponding new Bank may appoint Adviser, Officer or other employees and fixing the remuneration and other terms and conditions of service. Indeed, the Board of Director of corresponding new Bank has such power but even that it does not seem to be illegal for a new Bank to lay down the service conditions by other method including the method of collective bargaining.

12. Para 529 of the Sastry Award envisages as follows :

"We do not think that any hard and fast rules can be laid down in connection with promotions. We are definitely opposed to the suggestion that employees' unions should be consulted in connection with promotions. It can not be supported on principle. We do not think that such consultation is likely to be helpful either. While there is

no doubt that seniority in service should be one of the most important factors to be taken into account for the purpose, we are unable to agree that mere length of service alone irrespective of efficiency, educational qualification, character and nature of responsibility required in connection with the vacancies to be filled in should be the sole or even the main criterion for promotion. Promotion is certainly not a matter which could be made automatic and a great deal of discretion by its very nature must rest with the management in this connection. It is not only difficult but very undesirable to lay down any one single principle for the exercise of this discretion."

The relevant part of Para 14.12 of the Desai Awards runs as hereunder :

"At present there are no hard and fast rules in connection with promotions. I cannot in this reference lay down whether for the purpose of promotion, employees should be considered establishment-wise, area-wise, circle-wise, state-wise or in the country as a whole. A seniority list to be useful must be co-related to the totality of persons from whom a choice is to be made for the purpose of promotions. It is not possible for me to direct any list to be prepared on any particular basis which would be of practical use. Under the circumstances, having regard to the limited scope of the Reference though I recognise the need for maintenance of seniority lists, I am unable to give any directions making it obligatory on the Banks to maintain seniority list on any particular basis. I may in passing, observe that having regard to the limited scope of the reference, this matter has not been fully dealt with before me."

13. It appears that the management of the Bank framed rules for promotion on the basis of a settlement on promotion policy between the management of Allahabad Bank and All India Allahabad Bank Employees' Co-ordination Committee on 11-1-75 (Ext. M-1). Part V under heading 'Promotion from Clerks to Special Assistants' Para (d) envisages as follows :

"(d) In the case of an employee who has at any time in the past been a member of the subordinate cadre his length of service will be reckoned from the date of his promotion to clerical cadre. Further, one year's seniority will be allowed for every three completed year's service reckoned from the date of appointment on promotion in subordinate cadre. However, such an employee will not be eligible for further promotion unless he has worked as a clerk at least for a period of three years."

There is no evidence on record to indicate that any seniority list was published on the basis of this

settlement. After expiry of the settlement it was replaced by settlement dated 22-1-83 (Ext. M-2) where in Part V, the same provision was incorporated with minor changes. The provision runs as follows :

"(d) In case of an employee stated above who has at any time in the past been a member of subordinate cadre, his length of service will be reckoned from the date of his promotion to the non-subordinate cadre. Further, one year additional seniority will be allowed for every three completed years' service reckoned from the date of appointment on probation in subordinate cadre. However, such an employee stated above will not be eligible for further promotion unless he has worked in the non-subordinate cadre for a period of two years."

14. It appears that on the basis of rules for promotion framed on the basis of settlement dated 22-1-83 the seniority list for the Special Assistant and Clerical Staff as on 31-12-84 was published for the first time on 24-3-85 (Ext.M-3). Later another seniority list for the Special Assistant and Clerical Staff as on 31-12-85 was published by the Bank on 19-1-87 (Ext.M-4). It further appears that provisional seniority list of Special Assistant and Clerical staff as on 31-12-87 was published by the Bank on 20-6-88 (Ext.M-5).

15. It is the case of the concerned workman that in the seniority list as on 31-12-84 his name appears at sl. no. 45 while the name of H. P. Rai, Rajendra Prasad and Kailash Prasad, all juniors to him, have appeared at sl. nos. 16, 27 and 28 respectively. The position is really so in so far as the seniority list is concerned. The management has asserted that the seniority list prepared by them is correct because it was prepared on the basis of the norms as spelt out in the promotion policy arrived at by settlement dated 22-1-83 (Ext.M-2). By way of clarification the management has stated that R. P. Rai was given weightage for three years for his service of about 11 years and 8 months in subordinate staff cadre as per norms of promotion policy and weightage of one year for graduation. Similarly, Rajendra Prasad and Kailash Prasad were given weightage of three years for their service of about 11 years and 5 months and 11 years and 9 months respectively in subordinate cadre. But the main question is not whether the seniority list was prepared on the basis of norms of promotion as spelt out of the settlement dated 22-1-83. The main crux of the question is whether such promotion policy and seniority list can be framed by the management by settlement with one union, although recognised one, over the head of another union of whether such settlement will be binding on the union not a party to it.

16. Admittedly, seniority list which flows from the settlement dated 22-1-83 was arrived at between the management of Allahabad Bank and All India Allahabad Bank Employees' Co-ordination Committee (Ext. M-2). The union Sri Tiwari belongs to is not party to the settlement. Besides, it

appears that the management arrived at the settlement with the union otherwise than in the course of conciliation proceeding. Such settlement is binding on the parties to the agreement as per Section 18(1) of the Industrial Disputes Act.

Appreciating that the management has lended itself into a difficult position by framing rules for promotion and embressing all the workman of the Bank by agreement with one union although there are atleast two unions operating in the Bank. MW-1 L. Govinda Rao, Personnel Officer, has tried wriggled the management out of the impasse by stating that the settlement was arrived at amicably but processed through Conciliation Officer as per Section 18 of the Industrial Disputes Act. This statement of his is a travesty of fact to say least, for there is no evidence on record that the agreement was arrived at in the course of conciliation proceeding or in presence of the Conciliation Officer. That being so, the net result of the agreement is that it is binding on the parties to the agreement. It has been held in the case reported in AIR 1978 SC. 828 that a settlement arrived at by an agreement between the employer and the workman otherwise than in the course of conciliation proceeding is binding on the parties to the agreement and the settlement arrived at in the course of conciliation proceeding under the Act is binding not only on the parties to the industrial dispute but also on other persons specified in clauses (b), (c) and (d) of Sub-Section 3 of Section 1 of the Act. This being so, it must be concluded that Bihar State Allahabad Bank Employees Union is not bound by the agreement dated 22-1-83 envisaging rules for promotion, which laid the basis for seniority list.

17. Sri Shreekant has contended that since Sri Tiwary and the members of his union have accepted benefits flowing from the settlement they are estopped from disputing the settlement. Unfortunately, the theory of implied agreement by acquiescence on the basis of acceptance of benefits flowing from the agreement by the workmen who were not signatory to the settlement is of no avail to the management since an implied agreement by acquiescence or by conduct, such as, acceptance of benefits under an agreement to which the workman acquiescing or accepting the benefit was not a party being outside the purview of the Industrial Disputes Act.

18. From my discussion above it is obvious that Sri Tiwary is not bound by the seniority list prepared on the basis of agreement dated 22-1-83. But it is not wise nor proper to a jettison the entire agreement. The management and the non-signatory union could avoid industrial unrest by arriving at an agreement which ensures to the benefits of the workmen. That being so, the correct approach should be that the management would decide the issue of seniority of Sri Tiwary after giving him hearing. Since there is no evidence on record to indicate that any other member of the union Sri Tiwary belongs to has been affected by the agreement, I am not inclind to pronounce any opinion in the matter.

19. Accordingly, the following award is rendered the action of the Allahabad Bank in placing S. K. Tiwary, Clerk. Bokaro Steel City Branch, junior to

others on the basis of settlement dated 22-1-1983 is not justified. The management is directed to determine the seniority of Sri Tiwary after giving him hearing in the matter.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer
[No. L-12011|40|87-D.II(A)]

का. प्र. 1348—आयोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रिय सरकार बैंक ऑफ इंडिया के प्रबन्धन से संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचाट को प्रकाशित करता है, जो केन्द्रिय सरकार का 16-5-89 को प्राप्त हुआ था।

S.O. 1348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of India and their workmen, which was received by the Central Government on the 16-5-89.

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

Industrial Dispute case No. 19 of 1988 (Central)
Dated, Bhubaneswar, the 24th April, 1989

BETWEEN

The Management of Bank of India, Orissa Zone,
Bhubaneswar. First Party
—Management.

AND

Their workmen represented through the General
Secretary, Bank of India Employees' Union,
C/o Bank of India, Balasore Branch.

Second Party
—Workmen.

APPEARANCES :

None For both the parties.

AWARD

The Government of India in the Ministry of Labour, in exercise of the powers conferred upon them by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute, vide their order No. L-12011|125|87-D.II(A), dated 14th July, 1988 for adjudication :

"Whether the action of the management of Bank of India, Orissa Zone in entrusting the special allowance duty to Shri S. Nayak, Cash-cum-Accounts Clerk at Paradip Branch and Shri S. C. Panda, Cash cum-Accounts Clerk at Sumandal Branch is justified ?

If not, who are the eligible candidates for entrustment of special allowance duty at Paradip and Sumandal Branch of the Bank of India in their places?"

2. The date is fixed to today for hearing. Both parties are absent today. In view of the non-appearance of both the parties in the Tribunal, it can safely be inferred that at present, no dispute subsists between the parties. Hence, a no dispute Award is passed, so far as this reference is concerned. Dictated & corrected by me.

S. K. MISRA, Presiding Officer
[No. L-12011/125/87-D. III(A)]

का. आ. 1349—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कडीगढ़ के पंचपट को प्रकाशित करती है तो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Punjab National Bank and their workmen, which was received by the Central Government on the 16th May, 1989.

ANNEXURE

BEFORE SHRI M. S. NAGRA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CANDIGARH

Case No. I.D. 35/86

PARTIES :

Employers in relation to the management of Hindustan Commercial Bank now Punjab National Bank.

AND

Their workman—Smt. Neelam Kapoor.

APPEARANCES :

For the workman—S. K. Mahajan.

For the management—Lembhar Chand.

INDUSTRY : Banking STATE : Punjab

AWARD

Dated 20th April, 1989

On a dispute raised by Smt. Neelam Kappor against Hindustan Commercial Bank now Punjab National Bank, Central Government had vide No. L-12012/121/86-D. IV(A) dated 9th November, 1987 referred the following dispute to this Tribunal :

"Whether the action of the management of Hindustan Commercial Bank (now Punjab

National Bank) in relation to their branch at Amritsar is not promoting Smt. Neelam Kappor, Clerk to the post of Special Asstt. is justified? If not, to what relief the workman is entitled and from what date?"

2. During the pendency of the proceedings the parties have amicably settled the dispute and informed the Tribunal accordingly through joint statement dated 11-4-1989. In view of the same a No Dispute Award is returned.

Chandigarh.
20-4-1989.

M. S. NAGRA, Presiding Officer
[No. L-12012/121/86-D. IV(A)]

का. आ. 1350—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार छत्तीसगढ़ बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure in the industrial dispute between the employers in relation to the Indian Bank and their workmen, which was received by the Central Government on the 16-5-1989.

ANNEXURE

BEFORE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL : ORISSA : BHUBANESWAR

Industrial Dispute Case No. 17 of 1988 (Central)

Bhubaneswar, the 17th April, 1989

BETWEEN :

The Management of Indian Bank, Cuttack

First Party

MANAGEMENT.

AND

Smt. Kushilata Gochhayat, C/o. Uchhab Gochhayat, At : Pabitrpara, P.O. Asureswar, Dist : Cuttack.

Second Party

WORKMAN.

APPEARANCES :

Shri N. Tripathy, Manager of Indian Bank, Danpur.

For the First Party-management.

Sri K. Nayak, General Secy., Indian Bank Employees' Union. Orissa.

For the Second Party-workman.

General Secretary, Indian Bank, Employees' Union,
Orissa.

The Government of India in the Ministry of Labour Department, in exercise of the powers conferred upon them by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute vide their order No. L-12012/610/87-D.II(A), dated 13th June, 1988 for adjudication :

“Whether the action of the management of Indian Bank, Danpur Branch in refusing employment to Smt. Kushilata Gochhavat, Sweepress w.e.f. 31-1-84 is justified? If not, to what relief the workman is entitled?”

2. This case was posted to today for recording of settlement. A joint petition of compromise is filed signed by the workman, her representative and the Manager of the Bank with a prayer that the same be recorded. Another petition is filed by both parties requesting to pass an award in terms of the compromise. The petition of compromise is read-over and explained to the workman and she admits the contents thereof to be correct. As per the terms of compromise the workman is taken back to employment and would be given wages and other benefits as admissible to such workman on and from the date she joins. The compromise, in the circumstances of the case appears to be fair. Hence, I pass this award in terms of compromise. The petition of compromise do form part of the award.

S. K. MISRA, Presiding Officer,
[No. L-12012/610/87-D.II(A)]

BEFORE THE PRESIDING OFFICER
INDUSTRIAL TRIBUNAL, ORISSA
BHUBANESWAR

I.D. Case No. 17/88 (Central)

BETWEEN :

The Management of Indian Bank.

First Party.

AND

Their workman—Smt. Kushilata Gochhayat.
 Second Party.

The humble joint petition of compromise on behalf of both the parties.

Most Respectfully Sheweth :—

1. That the dispute pending for adjudication by this Hon'ble Tribunal in this case in the following terms :—

"Whether the action of the Management of Indian Bank Danpur Branch in refusing employment to Smt. Kushilata Gochhayat, Sweenress, w.e.f. 31-1-84 is justified ? If not what relief the workman is entitled ?"

2. That the second party workman is being represented in this case by Sri Kulamani Nayak. the

3. That in the meanwhile, both the parties in their mutual interest have had several rounds of talk to settle up the dispute amicably and fairly. The parties have now ultimately arrived at a settlement of the dispute with their free volition and without any outside pressure, the terms of which are recited below :-

(a) The second party workman Sm^r Kushilata Gochhayat will be given fresh employment as a part time sweepress on permanent basis at Danpur Branch of the first party w.e.f. the date of her joining in the service of the first party. On her so joining, she will be eligible to draw 1/3 scale wage at the existing rate as applicable to Danpur Branch and other benefits as admissible.

(b) Smt. Kushilata Gochhayat will not be eligible nor shall lay any claim to continuity of service or to back wages or to any other service benefits for the period of her unemployment.

3. Both the parties understand and agree that, this settlement is fair and in the best interest of the parties and the parties accordingly declare that, they have no other or future cause of action to pursue this case.

In the above circumstances, both the parties jointly and severally pray that, this Hon'ble Court be graciously pleased to accept this compromise and to pass an award in terms of this compromise.

And for such act of kindness the parties shall ever pray.

By the second party
through.

Sd/-
(Kushilata Gochhayat.)
Witness

Sd/-
(Kulamani Nayak)
(General Secretary)
Indian Bank Employees' Union.
By the first party
through.

For INDIAN BANK
Manager, Dinnur Branch
Sd/-

(Niranjana Tripathy)
Bansidhar Sahoo
In Clerk
O. R. T. Co. Ltd. Bhubaneswar
Bhubaneswar, 17th April 1989.

का. पा. 1951-—औद्योगिक विवाद अधिनियम, 1947
(1947 का 14) की प्राग 17 के अन्वय में, केन्द्रीय सरकार बैंक
प्राप्त, इंडिया के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारियों के
बीच, अन्तर्गत में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक
अधिकरण संघीय के पंचवट को प्रकल्पित करती है जो केन्द्रीय सरकार
को 18-5-89 को प्राप्त हुआ था।

S.O. 1351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of

the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of India and their workmen, which was received by the Central Government on the 16th May 1989.

ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
CHANDIGARH

Case No. I D 67/86

PARTIES :

Employers in relation to the management of Bank of India.

AND

Their workmen : Amar Singh

APPEARANCES :

For the workman—Sh. Natha Singh.

For the management—None.

INDUSTRY : Banking STATE : Punjab

AWARD

Dated 21st April, 1989

On the dispute raised by Amar Singh against Bank of India Central Government had vide No. L-12012/233/86-D. II(A) dated 16-12-1986 refer the following dispute to this Tribunal :

“Whether the action of the management of Bank of India in termination of services of Shri Amar Singh gunman w.e.f. 14-6-1985 is justified? If not, to what relief workman concerned is entitled?”

2. Case of the workman is that he joined services of the Bank on 19-7-1984 in the capacity of Bank guard/gunman at a salary of Rs. 450 p.m. But Bank illegally terminated his services on 14-6-1985. He seeks his re-instatement back in service with full back wages.

In its answer filed management took plea that Amar Singh is not a workman as defined under Section 2(i) of the I.D. Act 1947 and the present proceedings are without jurisdiction. It is mentioned that a meeting had taken place on 27-3-1984 at Punjab Bhawan Chandigarh when decision was taken for posting of special police officers by the Senior Superintendent of Police in terms of Section 17 of the Police Act and the special police officers so appointed were to work under the discipline and control of the District SSP's but the Banks were to pay honorarium of Rs. 15 per day to each SPO through Police Officer to be designated by the SSP. It is pleaded that in the light of the said decision taken at meeting with police officers with the bank authorities Amar Singh was deployed by the police authorities to guard Bank of India, Sarna Canal Branch in Pathankot district during the period

1984-85. Police authorities had also provided fire arms and ammunition to Amar Singh who continued to function under the direct control and supervision of District Superintendent of Police but he was paid Rs. 15 per day by the Bank in the form of honorarium as agreed to in the meeting dated 27-3-84 between senior Officer of Police with Bank Officers. It is pleaded further that as the law and order situation improve Amar Singh was not deployed by police authorities subsequently on their own. At no point of time Amar Singh was employee of the Respdt. Bank and it is the police authorities who were directly deploying, controlling and supervising the work of the petitioner. In nut-shell the defence of the respdt. bank that there was no employers and employee relation between the respdt. bank and Amar Singh petitioner in as much as the petitioner was deployed by the police authorities at their own and subsequently withdrawn and thereafter Bank has posted a regular armed guard Anna Ram in its Sarna Canal Branch w.e.f. 25-3-1986 in the regular scale on permanent basis.

3. Parties were allowed to lead evidence. The management filed affidavit Ex. M1 of Mangal Singh Industrial Relation Officer, Bank of India Zonal Office, Chandigarh who solemnly affirmed that scheme of deployment of special police officers was approved in a meeting held on 27-3-1984 between police officers and Bank Officers wherein it was stipulated that employment as SPO is not a regular government service and it will be made plain to all individual employees on this duty that they are not regular employees of the Bank. Manager of each branch will however arrange to pay to each SPO an honorarium of Rs. 15 per day for the full period of 30/31 days in the month. It is pleaded further that the Police Officer had deployed some of their personnel to Guard branches of the Bank and present petitioner Amar Singh was deputed by the Police Authorities to Guard Sarna Canal Branch of Bank of India in Pathankot District. Amar Singh who was provided with gun by the Police Authorities continue to function under the direct Control and Supervision of District Supdt. of Police who was deploying such persons from time to time taking into account law and order situation of the concerned area. Subsequently Police Authorities stop sending Amar Singh on their own and was thus withdrawn by them (Police Authorities). Management also placed on file copy I-x, M2 of the circular No. PZO/Sec. 502/84-014 dated 21-7-1984 incorporating decision taken on 27-3-84 in the meeting of Bank Officers with the Police Authorities. During his cross examination Sh. Mangal Singh made statement that no service record of the petitioner was kept and attendance was never marked by the Bank but a private note was kept by Branch Manager in a diary for calculating the working days for which he was to be paid.

In rebuttal workman tendered his affidavit Ex. W1 reiterating allegations made in the statement of claim that he was appointed in 1984 as Gun man at salary of Rs. 450 but his services were illegally terminated on 14-6-1985 without giving any retrenchment compensation or one month notice. During his cross-examination he admitted that at the asking of the Sainik Board, Senior Superintendent of Police after

verifying antecedent had asked him to accompany the Bank Manager. He also admitted that he was not issued any letter of appointment by the Bank.

4. The evidence on the file shows that in a meeting held on 27-3-1984 between Bank authorities and State Police functionaries at Punjab Bhawan Chandigarh, it had been decided that District Superintendent of Police will be appointing special police officers in terms of Section 17 of the Police Act and Manager of each branch will arrange to pay to each special police Officers (S.P.O.s) honorarium at Rs. 15 per day for the full period of 30/31 days in the month. It will be worthwhile to reproduce columns 2 & 4 of para 3 of the extract of the meeting reproduced in Bank's letter dated 21-7-1984 photocopy of which is Ex. M2 which reads as follows :

“(ii) For all other branches guards will be provided by District SSPs after selecting suitable ex-serviceman or other able bodied persons who will be appointed as special police Officers in terms of Section 17 of Police Act. Preference may be given to persons who may already be in possession of licensed weapons. All persons appointed as SPOs for this purpose will be given a brief training for about 7 days in the Police Lines in the handling of weapons, taking suitable positions for protection of branches, rudimentary field crafts etc. These SPOs will work under the discipline and control of the District SPOs and as per police Act. They will have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel.”

(iv) It will be made plain to all individuals employed on this duty that they are not regular employees of the Bank and should not, therefore, harbour in their minds any claim for permanent employment or other concessions which are available to Bank employees. However, as and when a Bank Security Force is raised, they will be given preference in the matter of recruitment provided they are found fit otherwise and their performance has been upto the marks during this period. Employment as SPO is not a regular government service. It is only an ad-hoc arrange which has been provided in the Police Act to tide over a difficult law and order situation and the money proposed to be paid to them is not a salary but actually an honorarium for meeting their out of pocket expenses etc.”

Workman has admitted that on the asking of the Sainik Board he had visited the office of the Senior Superintendent of Police who in turn asked him to accompany the bank manager. Admittedly no letter of appointment was issued by the Bank authorities to him.

It is simple case wherein in light of deteriorating law & order situation in Punjab State it had been

thought fit by the police to provide S.P.Os at vulnerable bank branches but their honorarium was left to be paid by bank branches so guarded. The petitioner contend that he was employee of the bank. The Bank management has taken a stand that petitioner was only ad-hoc employee of the police department of the State. In support of his contention that petitioner is employee of the State Police, learned counsel for the management referred me to various provisions of the Police Act, 1951 which envisages appointment of S.P.Os (Special Police Officers) at cost of individual. In this respect he has drawn my attention to Section 13 of the Police Act which provides that the District Supdt. of Police & Officers senior to him may on the application of any person, depute any number of police officers at the charge of the person making application, but the said force shall be exclusive under the orders of the District Supdt. of Police. He has further referred me to Section 17 of the Police Act which provides for appointment of S.P.Os Section 18 of the Act provides that S.P.Os so appointed shall be amenable to the same penalty and the subordinate to the same authority as the ordinary officer of police. There is overwhelming evidence on the file to show that present petitioner was appointed as S.P.O. by police authorities, but since he was deputed to guard banks, the Bank management had agreed to pay honorarium @ Rs. 15 per day to the S.P.Os so posted. Admittedly present petitioner never applied to the Bank authorities for his appointment and no letter of appointment was issued to him. The S.P.Os including the petitioner had been given arms and ammunition by police authorities which were returned back to the police department when services of the petitioner were dispensed with. The petitioner was ad-hoc employee of police department and not employee of the Bank of India. There is thus no question of termination of his services by the Bank. The reference is therefore, returned with the findings that neither petitioner had been employed by the Bank of India nor his services were terminated by the said bank and he is not entitled to any relief whatsoever.

Chandigarh.

M. S. NAGRA, Presiding Officer
[No. L-12012/233/86-D. II(A)]

का. प्र. 1352—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार और-एन्डल बैंक आफ कामर्स के प्रबन्धन के सबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचपट को प्रकाशित करना है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Oriental Bank

of Commerce and their workmen, which was received by the Central Government on the 16-5-89.

ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT.
CHANDIGARH

Case No. I.D. 29/86.

PARTIES :

Employers in relation to the management of Oriental Bank of Commerce.

AND

Their workman : Nirmal Bhatia.

APPEARANCES :

For the workman—Shri V.S. Malhi.

For the management—Shri Jagat Arora.

AWARD

Dated 24th April, 1989

On a dispute raised by Mrs. Nirmal Bhatia against Oriental Bank of Commerce, Central Govt. had vide No. L-12012/88/85-D.1V(A) dated 17th March 1986 referred the following dispute to this Tribunal for decision :—

"Whether the action of the management of Oriental Bank of Commerce in terminating the services of Miss Nirmal Bhatia, Clerk who has worked for 89 days w.e.f. 1-1-1981 to April 1981 and not considering her for further employment in view of the Section 25(H) of the I.D. Act 1947 is justified? If not, to what relief is she entitled?"

2. The case of the petitioner as set out in the statement of claim is that Nirmal Bhatia petitioner had worked in Katra Ahluwalia Branch of the Oriental Bank of Commerce for 89 days from 1-1-1981 to April 1981 and her services were terminated by the management without giving any notice or pay in lieu thereof. It is pleaded that after termination of the petitioner's service, sizeable number of clerks, were employed by the Bank without affording any opportunity of employment to the petitioner. She seeks preference for employment in the Bank in terms of Section 25-H of the I.D. Act 1947 and has prayed for all connected benefits due to her for keeping her unlawfully unemployed.

In its answer filed the management took preliminary objection that dispute under reference is only an opportunistic adverturism on the part of the petitioner who moved for the present reference in the year 1986 regarding her non-employment in the year 1981. On merits it is mentioned that Nirmal Bhatia petitioner had worked for the Bank for 89 days as temporary clerk in leave vacancy arrangement of regular staff etc. and her employment for specified period which was of purely temporary nature had come to an end by efflux of time. It is pleaded that recruitment in the clerical cadre in the Bank is now done by the Banking service Recruitment Board and the

answering Bank is not free free to appoint any body in clerical cadre unless sponsored by the said Board. It is pleaded that Bank can engage temporary staff in accordance with the provisions of paras 20(7) and 20(8) of the Bipartite Settlement dated 17-10-1966, and petitioner is not entitled to the benefits of Section 25-H of the Industrial Disputes Act 1947.

3. Both the parties were allowed to read evidence and they advanced the same. Mrs. Nirmal Bhatia petitioner filed affidavit Ex. W1 tendering allegations made in the statement of claim. During her cross-examination she admitted that she was appointed temporarily in leave arrangement and she never applied for permanent appointment to the Bank. She also admitted that her name was never sponsored by the Banking Service Recruitment Board in as much as she never took any written test or appeared for interview. When asked she made statement that she can not give any reason for not raising the dispute earlier. She also admitted that she never attended the conciliation proceedings and does not know the contents of the present petition sponsored by worker's union. In rebuttal, the management filed affidavit Ex. M1 of Shri V. K. Gupta, then branch manager, Katra Ahluwalia branch, Amritsar who solemnly affirmed that petitioner had worked in the Bank for 89 days as a temporary clerk in the vacancy arising out of leave of permanent staff and temporary increase in work load the branch. Alongwith affidavit he also filed list Ex. M2 of permanent staff and their leave period against which petitioner was temporarily appointed. He has testified that appointment of permanent clerk is done through Banking Service Recruitment Board. He also tendered copy Ex. M3 of Circular dated 6-6-1980 from the Ministry of Finance, Govt. of India to the Bank laying down recruitment scheme for public Sector bank. Perusal of the said circular shows that under clause 5—16 of the scheme participating banks may fill up temporary vacancies through employment exchange for a period which shall not exceed an aggregate span of six months.

Nirmal Bhatia petitioner who had worked with the respondent Bank for 89 days in leave vacancy arrangement seeks benefits of permanent employment on the basis of provisions of Section 25-H of the I. D. Act 1947. She can seek benefits under Section 25-H of the I.D. Act 1947 only if her case is that of 'recruitment' as defined under Section 2(oo) of the Industrial Disputes Act 1947. She admitted in her cross-examination that her appointment was temporary in leave arrangement. The case is thus covered under exception (bb) of Section 2(oo) and it was not a case of "retrenchment" so as to invoke benefits of preference in re-employment under Section 25-H of the I.D. Act 1947. In view of provisions of Para 20.8 of 1st Bipartite Settlement of 19-10-66 the bank within its competence to appoint temporary workman against permanent vacancy for a period not exceeding 3 months during which period the bank shall make arrangement for filling of the vacancy permanently. The petitioner's employment was not renewed after 89 days and there was no question of termination of her services by the Bank. The reference is returned with the findings that action of the management of Oriental Bank of Commerce for not renewing temporary service of Mrs. Nirmal Bhatia clerk who had worked for 89 days w.e.f. 1-1-1981 to April

1981 and not considering for further employment was justified and she is not entitled to any relief under Section 25-H of the Industrial Disputes Act 1947 or otherwise.

Chandigarh.

M. S. NAGRA, Presiding Officer

[No. L-12012/88/85/D. IV(A)]

का. आ. 1353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ इंडिया के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of India and their workmen, which was received by the Central Government on the 16th May 1989.

ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 49/86

PARTIES :

Employers in relation to the Management of Bank of India

AND

Their Workman : Sardara Singh.

APPPEARANCES :

For the Workman.— Sh. Natha Singh.

For the Management.— None.

INDUSTRY : Banking STATE : Punjab

AWARD

Dated 21st April, 1989

On the dispute raised by Sadara Singh against Bank of India Central Government had vide No. L-12012/216/85-D.II(A) dated 28-5-86 refer the following dispute to this tribunal :

"Whether the action of the management of Bank of India in terminating the employment of Shri Sardara Singh, Gunman with effect from 14-6-85 is justified ? If not, to what relief the workman concerned entitled ?"

2. Case of the workman is that he joined services of the Bank on 19-7-1984 in the capacity of Bank guard/gunman at a Salary of Rs. 450/- p.m. But Bank illegally terminated his services on 14-6-1985. He seeks his re-instatement back in service with full back wages.

3. In its answer filed management took plea that Sardara Singh is not a workman as defined under Section 2(S) of the I.D. Act 1947 and the present proceedings are without jurisdiction. It is mentioned that a meeting had taken place on 27-3-1984 at Punjab Bhawan Chandigarh when decision was taken for posting of special police officers by the Senior Superintendent of police in terms of Section 17 of the Police Act and the special Police Officers so appointed were to work under the discipline and control of the District SSP's but the Banks were to pay honorarium of Rs. 15/- per day to each SPO through Police Officers to be designated by the SSP. It is pleaded that in the light of the said decision taken at meeting Police Officers with the bank authorities Sardara Singh was deployed by the Police authorities to guard Bank of India Sarna Canal Branch in Pathankot district during the period 1984-85. Police authorities had also provided fire arms and amunition to Sardara Singh who continued to function under the direct control and supervision of District Superintendent of Police but he was paid Rs. 15/- per day by the Bank in the form of honorarium as agreed to in the meeting dated 27-3-84 between senior officer of police with Bank officers. It is pleaded further that as the law and order situation improved Sardara Singh was not deployed by police authorities subsequently on their own. At no point of time Sardara Singh was employee of the Respdtd. Bank and it is the police authorities who were directly deploying/controlling and supervising the work of the petitioner. In nutshell the defence of the respdtd. bank is that there was no employers and employee relation between the respdtd. bank and Sardara Singh petitioner in as much as the petitioner was deployed by the police authorities at their own and subsequently withdrawn and thereafter Bank has posted a regular armed Guard Atma Ram at its Sarna Canal Branch w.e.f. 25-3-1986 in the regular Scale on permanent basis.

4. Parties were allowed to lead evidence. The management filed affidavit Ex. M1 of Mangal Singh Industrial Relation Officer, Bank of India Zonal Office Chandigarh who solemnly affirmed that scheme of deployment of special police officers was approved in a meeting had on 27-3-1984 between police officers and Bank Officers wherein it was stipulated that employment as SPO is not a regular government service and it will be made plain to all employees on this duty that they are not regular employees of the Bank. Manager of each branch will however arrange to pay to each SPO an honorarium of Rs. 15/- per day for the full period of 30/31 days in the month. It is pleaded further that the Police Officer had deployed some of there personnel to Guard branches of the Bank and present petitioner Sardara Singh was deputed by the Police Authorities to Guard Sarna Canal Branch of Bank of India in Pathankot District. Sardara Singh who was provided with Gun by the Police Authorities

continue to function under the direct control and supervision of District Superintendent of Police who was deploying such persons from time to time taking into account law and order situation of the concerned area. Subsequently Police Authorities stopped sending Sardara Singh on their own and was thus withdrawn by them (Police Authorities) Bank Management also produced in evidence Ex. M3 Affidavit of Janak Raj Gupta then Manager of Sarna Canal Branch of the Bank of India who solemnly affirmed that Police Authorities had employed some of these personnel including Sardara Singh and Amar Singh to Guard Bank Branch during the year 1984-85 Both Sardara Singh and Amar Singh were provided with guns by the Police Authorities it is further stated that Sardara Singh submitted Application alongwith copy of Scheme of Ex. M3 claiming honorarium Rs. 15/- for holidays. Management also placed on file copy Ex. M2 of the circular No. PZO/Sec. 502/84-014 dated 21-7-84 incorporating decision taken on 27-3-84 in the meeting of Bank Officers with the Police Authorities. During the cross-examination Sh. Mangal Singh made statement that no service record of the petitioner was kept and attendance was never marked by the Bank but a private note was kept by Branch Manager in a diary for calculating the working days for which he was to be paid.

In rebuttal workman tendered his affidavit Ex. W-2 reiterating allegation made in the statement of Jim. During his cross-examination he admitted that he did not submit any application to the Bank for giving employment. He also submits that Bank never issued him any appointment letter. He made statement that he was called to the Office of Superintendent of Police through Constable and from the S.S.P. office the Branch Manager took him to the Branch.

4. The evidence on the file shows that in a meeting held on 27-3-1984 between Bank authorities and State Police functionaries at Punjab Bhawan Chandigarh, it had been decided that District Superintendent of Police will be appointing special police officers in terms of Section 17 of the Police Act and Manager of each branch will arrange to pay to each special police officers (S.P.O.s) honorarium at Rs. 15/- per day for the full period of 30/31 days in the month. It will be worthwhile to reproduce column 2 & 4 of para 3 of the extract of the meeting reproduced in Bank's letter dated 21-7-1984 photocopy of which is Ex. M2 which reads as follow :

"(ii) For all other branches guards will be provided by District SSPs after selecting suitable ex-serviceman or other able bodied persons who will be appointed as special police Officers in terms of Section 17 of Police Act. Preference may be given to persons who may already be in possession of licenced weapons. All persons appointed as SPOs for this purposes will be given a brief training for about 7 days in the police lines in the handling of weapons, taking suitable positions for protection of branches, rudimentary field crafts etc. These SPOs will work under the discipline and control of the District SSPs and as per Police Act.

They will have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel."

(iv) It will be made plain to all individuals employed on this duty that they are not regular employees of the Bank and should not, therefore, harbour in their minds any claim for permanent employment or other concessions which are available to Bank employees. However, as and when a Bank Security Force is raised, they will be given preference in the matter of recruitment provided they are found fit otherwise and their performance has been upto the marks during this period. Employment as SPO is not a regular government service. It is only an ad hoc arrangement which has been provided in the Police Act to tide over a difficult law and order situation and the money proposed to be paid to them is not a salary but actually an honorarium for meeting their out of pocket expenses etc."

Workman has admitted that on the asking of the Sainik Board he had visited the office of the Senior Superintendent of Police who in turn asked him to accompany the Bank manager. Admittedly no letter of appointment was issued by the Bank authorities to him.

It is simple case wherein light of deteriorating law and order situation in Punjab State it had been thought fit by the police to provide S.P.Os. at vulnerable bank branches so guarded. The petitioner contend that he was employee of the bank. The Bank management has taken a stand that petitioner was only ad hoc employee of the police department of the State. In support of his contention that petitioner is employee of the State Police, learned counsel for the management referred me to various provisions of the Police Act, 1951 which envisages appointment of S.P.Os. (Special Police Officers) at cost of individual. In this respect he has drawn my attention to Section 13 of the Police Act which provides that the District Supdt. of Police & Officers senior to him may on the application of any person, depute any number of police officers at the charge of the person making application, but the said force shall be exclusive under the orders of the District Supdt. of Police. He has further referred me to Section 17 of the Police Act which provides for appointment of S.P.Os. Section 18 of the Act provides that S.P.Os. so appointed shall be amenable to the same penalty and be subordinate to the same authority as the ordinary officer of police. There is over-whelming evidence on the file to show that present petitioner was appointed as S.P.O. by police authorities, but since he was deputed to guard banks, the Bank management had agreed to pay honorarium @ Rs. 15 per day to the S.P.O.s so posted. Admittedly present petitioner never applied to the Bank autho-

ries for his appointment and no letter of appointment was issued to him. The S.P.O.s including the petitioner had been given arms and ammunition by police authorities which were returned back to the police department when services of the petitioner were dispensed with. The petitioner was ad hoc employees of police department and not employee of the Bank of India. There is thus no question of termination of his services by the Bank. The reference is therefore, returned with the findings that neither petitioner had been employed by the Bank of India nor his services were terminated by the said bank and he is not entitled to any relief whatsoever.

Chandigarh.

21-4-89.

ATTESTED TRUE COPY

Sd/-

Secretary

Central Govt. Industrial Tribunal
cum Labour Court, Chandigarh.

M. S. NAGRA, Presiding Officer.

[No. L-12012/216/85-D. II(A)]

N. K. VERMA, Desk Officer